

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DAVINO WATSON,

Plaintiff,

-against-

JUAN ESTRADA, MICHAEL ORTIZ,  
TIMOTHY GUNTHER, JOHN DOES  
1-8, and the UNITED STATES,

Defendant.

:  
: 14-CV-6459 (JBW)  
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:  
: United States Courthouse  
: Brooklyn, New York  
:  
: Thursday, August 20, 2015  
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TRANSCRIPT OF CIVIL CAUSE FOR HEARING  
BEFORE THE HONORABLE JACK B. WEINSTEIN  
UNITED STATES SENIOR DISTRICT COURT JUDGE

A P P E A R A N C E S:

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New York, New York 10019  
BY: MARK A. FLESSNER, ESQ.  
ROBERT J. BURNS, ESQ.

For the Defendant: UNITED STATES DEPARTMENT OF JUSTICE  
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BY: JOSEPH A. MARUTOLLO, ESQ.  
GAIL A. MATTHEWS, ESQ.

Court Reporter: Richard W. Barry, RPR  
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Proceedings recorded by computerized stenography.  
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1 THE COURT: Call the case, please.

2 COURTROOM DEPUTY: Civil cause for evidentiary  
3 hearing, Watson versus Juan Estrada, et al..

4 Counsel note your appearances, please for the  
5 plaintiff.

6 MR. FLESSNER: Mark Flessner and Bob Burns on behalf  
7 of Mr. Watson who is present.

8 THE COURT: For the defendant?

9 MR. MARUTOLLO: For the defendant, Joseph Marutollo  
10 and with me is Assistant United States Attorney Gail Matthews.

11 MS. MATTHEWS: Good to see you.

12 THE COURT: You are the plaintiff?

13 MR. WATSON: Yes.

14 MR. BURNS: Robert Burns from Holland & Knight.

15 DAVINO WATSON , having been first duly sworn, testified as  
16 follows:

17 THE COURT: This is a hearing on equitable tolling?

18 MR. FLESSNER: Yes, sir.

19 THE COURT: You have the burden?

20 MR. FLESSNER: Yes. On this part of it, yes.

21 THE COURT: Do you wish to go forward?

22 MR. FLESSNER: Yes, sir.

23 THE COURT: Call your witness, please.

24 MR. MARUTOLLO: Your Honor, may the parties or the  
25 Government make an opening statement just to brief, give an

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1 overview as to what the evidence will show in this hearing?

2 THE COURT: All right. Do you want to make one too?

3 MR. FLESSNER: Sure.

4 THE COURT: All right.

5 MR. FLESSNER: I hadn't contemplated it, but I will.

6 I think we have two theories going on here, one is  
7 that the case was filed within the statute of limitations  
8 under the Supreme Court case, Heck. And, that that determines  
9 when the statute begins to run. You saw it in our filing,  
10 there is a chart which shows when the statutes run for each of  
11 the separate causes of action. So we think that the equitable  
12 tolling argument is not even necessary.

13 But if the Court were to find that Heck does not  
14 control, which we think it clearly does, that Mr. Watson, was  
15 detained for three and a half years without legal process  
16 because he was in a detention facility. He did not have a  
17 right to counsel, he did not have a right to a bond hearing.  
18 He did not have access to habeas corpus.

19 The Federal Courts were divested of jurisdiction to  
20 hear, under -- I will give you the precise statute, which will  
21 assist you, under 8 U.S.C. 1503, that statute strips the  
22 Federal Court to review claims of citizenship, once someone is  
23 placed in removal proceedings.

24 So, Mr. Watson was in a-- in the Batavia Buffalo  
25 Detention Center, he did not even have a high school education

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1 at the time. He did not have access to attorneys because he  
2 called all of the attorneys that were listed on the sheet  
3 there, none of them would take the case. He was not able to  
4 pay them.

5 There were law students who would come in and give  
6 presentations about know your rights, which were all regarding  
7 immigration law, nothing with respect to filing administrative  
8 or constitutional causes of action, against the government.

9 Mr. Watson because of his level of education, has no  
10 legal training, was not even aware that this was a  
11 possibility.

12 Also, while Mr. Watson during all this time believed  
13 he was a United States citizen by virtue of his father, the  
14 Government kept telling him he wasn't a naturalized United  
15 States citizen. So he could not have known that he had his  
16 constitutional rights had been violated.

17 So because he did not have access to legal  
18 materials, because he did not have access to attorneys,  
19 because he was unconstitutionally detained for three and a  
20 half years, and because the Government continually told him  
21 that he did not, that he was not a United States citizen, and  
22 because that he did not have legal process with respect to his  
23 detention, because it was prohibited under the immigration act  
24 and other federal statutes.

25 That we think that it would be unjust for the

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1 statute of limitations to expire, and so we are asking it be  
2 equitably tolled, until various -- there are various options  
3 that we have given the Court in our chart. One is when he was  
4 released, one is when the removal proceedings were terminated,  
5 which was two years later and one is when the-- the DHS issued  
6 his certificate of citizenship which was again, about 735 days  
7 later. Leaving him over two years without being able to work.

8           The Government continually has argued various  
9 things, one thing that they-- just factually in error argued,  
10 that the statute started to run when the Second Circuit  
11 remanded the case to the BIA. The Second Circuit remanded the  
12 case for the BIA to make the determination, whether or not Mr.  
13 Watson should be released. The Second Circuit did not remand  
14 the case holding that he was a citizen and should be released.

15           So that Second Circuit ruling is really not a-- is  
16 not a definitive ruling at all because of the BIA, the one  
17 that terminated removal proceedings is the one that ultimately  
18 made the decision.

19           THE COURT: Now, what theory are you requesting  
20 damages? What theories?

21           MR. FLESSNER: We have Bivens and FTCA.

22           THE COURT: Bivens and Federal Tort Claims Act.  
23 Those are the two?

24           MR. FLESSNER: Correct.

25           If the Court would--

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1 THE COURT: Excuse me, not any independent claim for  
2 constitutional violation?

3 MR. FLESSNER: I will-- here it is.

4 There is a Bivens claim, there is false  
5 imprisonment, malicious prosecution and negligence. This is  
6 on page nine of our supplemental briefing.

7 THE COURT: Now, if I should find that your claims--  
8 any claim can go forward, we have the jury problem. In  
9 general, a jury could decide whatever issues, are jury issues,  
10 before the Court decides.

11 Now, we could expedite it and simplify it somewhat,  
12 if you went forward on non jury theories.

13 Which one of your theories do not require a jury?

14 MR. FLESSNER: I think the law is before a verdict  
15 is returned, that the plaintiff has to make a choice of causes  
16 between the Bivens and the FTCA claim. And we have decided,  
17 although in most likelihood, we would go with the FTCA, we  
18 have not-- since we are not forced to make that decision yet.

19 THE COURT: Well, the FTCA is a bench trial.

20 MR. FLESSNER: Correct.

21 THE COURT: So.

22 MR. FLESSNER: Bivens would not be.

23 THE COURT: Bivens would be jury?

24 MR. FLESSNER: Correct.

25 THE COURT: So your proposal is, that we hear the

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1 bench and the jury trial together?

2 MR. FLESSNER: Yes.

3 THE COURT: That is awkward, because that would  
4 allow in evidence in the bench trial that would not be in the  
5 jury trial.

6 MR. FLESSNER: I have seen it done. It is doable,  
7 but you are right.

8 THE COURT: What is the advantage of you going on  
9 both Bivens and Federal Tort Claims?

10 MR. FLESSNER: What is the advantage? Because we  
11 think we have causes of action in each case.

12 But again, I think the law is that we have to make a  
13 choice before the verdict is returned as to which theory we  
14 are going on.

15 And we have not, since we are not forced to make  
16 that decision yet, we have not reached that.

17 THE COURT: I don't want to bring in the entire  
18 machinery of a jury trial in which I will have to, if I'm  
19 simultaneously trying the Federal Tort Claim Act, excuse the  
20 jury from time to time, in order to hear evidence which would  
21 be appropriate in a bench trial but not in a jury trial.

22 What I am wondering is, what advantages are there to  
23 you, in what you have to prove in a Federal Tort Claims as  
24 against a Bivens.

25 The damages are the same, aren't they? Essentially?

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1 MR. FLESSNER: Presumably they would be the same, if  
2 the United States were indemnifying the individual agents.

3 THE COURT: Well, they would, right?

4 MR. MARUTOLLO: Right.

5 THE COURT: So, that is out of the question. They  
6 are going to be.

7 So what different elements are there in the two  
8 causes of action? What different damages are there?

9 MR. FLESSNER: Well, the elements would be different  
10 depending on which cause of action we choose. The evidence  
11 for each --

12 THE COURT: Well --

13 MR. FLESSNER: Because there is false imprisonment,  
14 malicious prosecution and negligence. So, the elements would  
15 be different depending on, you know-- the evidence is  
16 different for each as well.

17 We just have not made that evaluation, this early in  
18 the stage, as to, you know, what our strongest evidence is.

19 THE COURT: Well, is there any objection to our  
20 reversing the normal course by trying the Federal Tort Claim  
21 Act first before the jury?

22 MR. FLESSNER: Before we try the jury?

23 THE COURT: Yes.

24 MR. FLESSNER: To bifurcate it?

25 THE COURT: Well, it is not a bifurcation exactly,



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1 it is a separate trial on separate theories.

2 MR. FLESSNER: I have not really thought through  
3 that question. I can't think of why other than it may be some  
4 duplication of evidence.

5 THE COURT: Well, if you win.

6 MR. FLESSNER: We probably would not proceed.

7 THE COURT: You would not go forward, if you lose, I  
8 don't know what the--

9 MR. MARUTOLLO: Your Honor, under 28 U.S.C. 2676,  
10 the FTCA would bar the Bivens claim.

11 MR. FLESSNER: Right. That is right. That is what  
12 I just said. We would have to make a decision.

13 MR. MARUTOLLO: If we won and the case would be  
14 over.

15 MR. FLESSNER: Right. I guess you are right about  
16 that.

17 MR. MARUTOLLO: Your Honor, either way, whoever wins  
18 the FTCA trial would bar any Bivens action. The case would be  
19 over at that point.

20 MR. FLESSNER: Because you are indemnifying, we have  
21 the option of dismissing the FTCA and going forward on the  
22 Bivens. We don't have to make that choice right yet. We  
23 don't have to choose it and dismiss it, is what I'm saying.

24 I mean if Your Honor is suggesting that we should  
25 think about proceeding on the FTCA and staying the Bivens and

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1 to see what is going to happen with the FTCA, we will  
2 certainly consider that. I just do not have-- we have not  
3 talked, I have not had time to think that through.

4 THE COURT: What is your view?

5 MR. MARUTOLLO: Well, first, I would clarify that  
6 there is not any indemnification until after the Department of  
7 Justice approves the judgment.

8 THE COURT: I understand. It is open, but it is  
9 highly likely that they would indemnify, I would suppose.

10 MS. MATTHEWS: It rarely happens though, Judge.

11 THE COURT: What?

12 MS. MATTHEWS: It rarely happens that there is a  
13 Bivens judgment and the Department decides that that un-- that  
14 finding of unconstitutional conduct, falls within the  
15 interests of the Government and justifies indemnification.

16 That is the difference, the reason why Bivens is  
17 carved out, unconstitutional conduct is carved out of the  
18 FTCA. Because in theory, unconstitutional conduct is never in  
19 the interest of the United States.

20 THE COURT: Excuse me?

21 MS. MATTHEWS: Unconstitutional conduct is never in  
22 the interest of the United States.

23 THE COURT: Right. You have not made a motion for  
24 summary judgment, on Bivens?

25 MR. MARUTOLLO: We have, Your Honor. So, in our--

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1 we moved on April 29th-- April 29th, Your Honor to.

2 THE COURT: I'm sorry.

3 MR. MARUTOLLO: Your Honor, we moved on April 29th  
4 to dismiss, all of the claims are time barred. We also argued  
5 that there was no private analog for the plaintiff's FTCA,  
6 malicious prosecution and negligence claims.

7 We also argued on the merits that the-- in the  
8 alternative for summary judgment, that the Bivens claims and  
9 the FTCA claims are-- should be dismissed.

10 THE COURT: If I allowed the FTCA claim to go  
11 forward, on what grounds could I dismiss the Bivens claim?  
12 Because as I understand it, the claim is against-- if I went  
13 forward on FTCA, allowed that to go through, I could, could I  
14 not, dismiss the Bivens on your motion for summary judgment?

15 MR. MARUTOLLO: Yes, Your Honor.

16 THE COURT: What we have here is low level people,  
17 guards essentially, who exercised no discretion whatsoever,  
18 just did what their superiors told them to do, correct?

19 MR. MARUTOLLO: That's correct, Your Honor.

20 THE COURT: You are claiming that they can't be held  
21 for constitutional violations for merely following orders.  
22 They could be, but an underlining who is merely following  
23 orders, certainly shouldn't be held to the same high standards  
24 as somebody who is making decisions, right?

25 MR. MARUTOLLO: Right. And among-- among other

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1 things, Your Honor, we argued that in our motion.

2 THE COURT: That you argued that?

3 MR. MARUTOLLO: Yes.

4 MR. FLESSNER: Well, that is not exactly right.

5 Because the-- ICE agents have discretion whether or not to  
6 hold an individual under mandatory detention or not. It is  
7 within their discretion to make that determination.

8 It was determined by these ICE agents that they--  
9 that Mr. Watson had to be held in detention during the removal  
10 proceedings. That was not reviewable.

11 THE COURT: But they are not knowledgeable about law  
12 or anything like that. They have a case where they are told  
13 that he is not a citizen. So it follows from their point of  
14 view that he should be held.

15 MR. FLESSNER: Well, they had an obligation, because  
16 he claimed-- there is protocol when a detainee or somebody in  
17 removal proceeding claimed citizenship, and they failed to  
18 follow that protocol. During the three and a half years  
19 detained, DHS issued four directions what to do if an  
20 individual is claiming citizenship and they failed to follow  
21 them for three and a half years, until directed to do so, by  
22 the BIA, on review from the Second Circuit.

23 THE COURT: Are you still pressing your motion for  
24 summary judgment on the claims against the jailers?

25 MR. MARUTOLLO: Yes, Your Honor.

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1 THE COURT: All right. I'm inclined to grant that  
2 and cut the gordian knot, and go to the Federal Tort Claims  
3 Act.

4 Because it is just too difficult to try the claims  
5 together, and it is not procedurally efficient to try one  
6 after the other.

7 So, I will get out a little opinion, but I'm going  
8 to dismiss everything but the Federal Tort Claim Act. We will  
9 then go ahead on the Federal Tort Claim Act, if we are going  
10 ahead on that, on the assumption that the statute of  
11 limitations has been barred back, correct?

12 MR. MARUTOLLO: That's correct, Your Honor.

13 THE COURT: You understand that?

14 MR. FLESSNER: I understand.

15 THE COURT: That is what we are going to do.

16 I'm not going to be tied up by this procedural knot,  
17 as interesting as it is. I want to go forward and decide this  
18 man's claims that have been pending now for so many years, get  
19 the litigation behind us.

20 MR. FLESSNER: If I may say, I think what maybe  
21 better to do, would be to stay the Bivens action and allow us  
22 to go forward on the FTCA action, and were we not to prevail  
23 on the action.

24 THE COURT: But there is-- there is an old opinion,  
25 Byrd, B-Y-R-D or something like that, I have not looked at it

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1 for years by Black. Making it very clear that the equity--  
2 the jury goes before the bench.

3 That is what I'm going to do anyway. I think from  
4 the Government's point of view, it is the easiest way to  
5 proceed. The Court's point of view, it is the easiest way to  
6 proceed, and from the plaintiff's point of view, it is as a  
7 practical matter, it is a sensible way to proceed, even though  
8 you may not agree with me. But that is where we are.

9 We are in a Federal Tort Claim Act, and that is all  
10 we have.

11 MR. MARUTOLLO: Your Honor, may I also add the  
12 agents' conduct was in the course of their employment, so that  
13 is why the FTCA claim, you know, would be more appropriate  
14 than Bivens here.

15 Your Honor, may I just go back, I guess to this  
16 hearing. May the Government make an opening statement?

17 THE COURT: So, we are dealing with FTCA. I made  
18 that decision, I will issue a little opinion, but that is  
19 where we are. We are on an FTCA case.

20 Go ahead, please.

21 MR. MARUTOLLO: Your Honor, the evidence will show  
22 that May 8th, 2008, was the date plaintiff was first detained  
23 by ICE officers. Plaintiff knew that he was a citizen on  
24 May 8th, 2008, and as such, plaintiff knew he was injured from  
25 that moment. Therefore, his FTCA claims, that accrued on May

1 8th, 2008 and are time barred.

2 The evidence will show in the hearing that the  
3 plaintiff does not meet his burden for establishing equitable  
4 tolling of the relevant limitations period. The plaintiff  
5 must prove that he has been pursuing his rights diligently and  
6 that some extraordinary circumstances stood in his way.

7 Here the evidence will show that the plaintiff  
8 cannot meet his burden with respect to either prong.

9 First, plaintiff's ignorance of the law does not  
10 excuse his failure to diligently pursue his FTCA claims.

11 Plaintiff will tell you that he did not know he  
12 needed to file a standard form 95, within a certain period of  
13 time. But you will hear however, Your Honor, that while in  
14 federal detention the plaintiff was a prolific legal filer,  
15 filed a number of motions, briefs, Petitions for review  
16 related to his immigration proceeding. You will learn from  
17 the plaintiff, that he exhausted all avenues available to him,  
18 except he did not exhaust his administrative remedies pursuant  
19 to the FTCA, despite the many resources at the Buffalo Federal  
20 Detention Facility.

21 You will learn that the Buffalo Federal Detention  
22 Facility where the plaintiff spent approximately 96 percent of  
23 his detention is a nationally accredited facility that serves  
24 as a model for other facilities. You will meet three  
25 employees of the Buffalo Federal Detention Facility, who will

- Defendant's Opening -

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1 be testifying today. Library recreation specialist Matthew  
2 Buck and Michael Finnigan; and supervisory detention officer  
3 Scott Schrader. These witnesses will explain a large number  
4 of resources available to detainees, including Mr. Watson.

5 You will hear that legal books and manuals were  
6 among the major resources available to the plaintiff.

7 The evidence will show that Buffalo Federal  
8 Detention Facility law library has approximately 1,023  
9 volumes.

10 So the library, contains 1,023 volumes including the  
11 Federal Rules of Civil Procedures, treatises and casebooks on  
12 torts, and the federal rules. One of the more popular books,  
13 published by the Columbia Law Review is called the Jailhouse  
14 Lawyers Manual, provides useful summaries, and explanations  
15 about FTCA claims.

16 You will learn another resource available to the  
17 plaintiff was the ability to research administrative claims on  
18 the Internet. The plaintiff was able to ask library staff to  
19 search the Internet, to determine how to file a claim against  
20 the Government, but again the plaintiff failed to take  
21 advantage of that resource.

22 The evidence will show that the third major resource  
23 at his disposal was LexisNexis. The plaintiff had total  
24 access to the LexisNexis program, provided with instructions  
25 on how to use this tool, and you will learn that plaintiff had



- Defendant's Opening -

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1 the ability to take advantage of easy to access LexisNexis  
2 research summaries which addressed issues related to FTCA  
3 claims.

4 Interestingly, you will learn from the plaintiff  
5 that on one hand he had no trouble using LexisNexis when  
6 researching cases for immigration court, but on the other  
7 hand, he argues that Lexis was insufficient for his FTCA  
8 claims.

9 Fourth, the evidence will show plaintiff could have  
10 accessed and printed commonly used printed forms, such as  
11 blank SF-95s on the detainee computers and he had access to  
12 mail, telephone, which he admits he used one to five times a  
13 day, and visitors at the facility.

14 Ultimately the evidence will show that despite the  
15 wide variety of resources, the plaintiff did not diligently  
16 pursue the claim. He will tell you, the plaintiff will tell  
17 you, he did not educate himself while at the facility.

18 Next, no extraordinary circumstances prevented the  
19 plaintiff from filing an FTCA claim in this case. You will  
20 learn that plaintiff did eventually obtain counsel in this  
21 case from Gibson, Dunn law firm, on April 2011. He also  
22 retained counsel from National Immigrant Justice Center.  
23 There is no dispute that plaintiff spoke to his attorneys at  
24 least 20 times while in detention, and at least 20 times after  
25 release. He was not prevented in any way from contacting

- Defendant's Opening -

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1 these attorneys.

2 Most significantly the plaintiff had separate  
3 conversations with both Gibson, Dunn attorneys and National  
4 Immigrant Justice Attorney respectively regarding the filing  
5 of an administrative relief claim related to detention.

6 Yet despite having counsel from a high profile law  
7 firm, the National Immigrant Justice Center, despite having  
8 conversations about filing an administrative claim, the  
9 plaintiff will now argue that he did not even know he could  
10 file a claim, until the case was actually filed, years after  
11 the statute of limitations expired.

12 The evidence will show that the plaintiff's claims  
13 strains credulity.

14 Moreover, the plaintiff will suggest that his  
15 failure to timely file an administrative claim, was due to the  
16 fact he was far away from friends and family. But the  
17 evidence will also show that when he was released from  
18 custody, living with his family, he still didn't pursue these  
19 claims, did not conduct any research.

20 As such the plaintiff cannot show that extraordinary  
21 circumstances prevented him from filing his administrative  
22 claims, and accordingly the defendant respectfully submits  
23 that plaintiff's claims are time barred and not subject to  
24 equitable tolling.

25 THE COURT: Thank you.

Watson - Direct - Flessner

19

1 Do you want to call witnesses?

2 MR. FLESSNER: We will call Mr. Watson.

3 THE COURT: The witness is already under oath.

4 MR. MARUTOLLO: Yes, Your Honor.

5 THE COURT: Okay.

6 DIRECT EXAMINATION BY MR. FLESSNER:

7 Q Please state your name for the record.

8 A Davino Watson.

9 Q Mr. Watson, are you a United States citizen?

10 A Yes, sir.

11 Q When did you become a citizen?

12 A On or about November 17th, 2002.

13 THE COURT: Read that back.

14 (Testimony read.)

15 Q Did you mean September 17th, 2002?

16 A Yes, sir.

17 Q Speak up, if you can.

18 A Yes, sir.

19 Q How did you become a United States citizen, under what  
20 method?

21 A My father became a -- he was naturalized, I got  
22 citizenship through him.

23 Q You were a minor at the time?

24 A Yes, sir.

25 Q You were living with him?

Watson - Direct - Flessner

20

1 A Yes, sir.

2 Q Can you briefly describe for the Court your educational  
3 background?

4 A Well, I attended high school up to 11th grade, where I  
5 dropped out. I attained my GED in the year 2013.

6 Q Are you currently taking any classes?

7 A Yes, I am.

8 Q What classes are you taking now?

9 A I'm taking a class called, building maintenance  
10 weatherization from a school --

11 THE COURT: I can't understand you.

12 A Sorry, I'm taking a trade school, called, building  
13 maintenance and weatherization the Northern Manhattan  
14 Corporation.

15 Q What are you being trained to do?

16 A I'm trained to do light electric work, plumbing,  
17 carpentry, masonry work.

18 Q Do you have any form of legal training?

19 A No, sir.

20 Q Other than this case, have you ever been involved in any  
21 lawsuit?

22 A No, sir.

23 Q Describe for the Court-- do you know approximately when  
24 you received your certificate of citizenship?

25 A I think around maybe May of 2013, I'm not sure.

Watson - Direct - Flessner

21

1 THE COURT: I'm sorry, what did you say?

2 THE WITNESS: Approximately around like May of 2013,  
3 sir.

4 Q Could it have been November of 2013?

5 A Yes.

6 Q Describe your employment history since receiving your  
7 certificate of citizenship?

8 A I have worked for three companies. I worked for a  
9 company called Akim Maintenance, I worked for another company  
10 called Greenland Landscaping, and I worked for another company  
11 called Horizon Construction.

12 Q Tell the Court what you were doing for the companies?

13 A Basically, I worked under a carpentry helper and also a  
14 laborer.

15 Q Prior to receiving your certificate of citizenship, were  
16 you able to work?

17 A No, sir.

18 Q Why not?

19 A I didn't have any documents, I didn't have any  
20 identification to get a job.

21 Q Turning your attention to May 8th, of 2008, do you  
22 remember that day?

23 A Yes, sir.

24 Q Were you detained by immigration, custom enforcement on  
25 that day?

Watson - Direct - Flessner

22

1 A Yes, sir.

2 Q And, where were you just prior-- when you were detained  
3 on May 8th?

4 A I was at a Lakeview Shock Incarceration Facility, a state  
5 program.

6 Q What is a state program for?

7 A Basically a military based program that trained men and  
8 women to be better individuals, they are given a lesser  
9 sentence than, you know, what they originally were sentenced  
10 for. Which in this case would be six months.

11 Q And what were you convicted of?

12 A I was convicted of attempt sale of controlled substance.

13 Q How --

14 THE COURT: Say that again.

15 THE WITNESS: I was convicted of attempt sale of  
16 controlled substance.

17 Q And, how long were you in Lakeview?

18 A I was in Lakeview for up to a period of eight months.

19 Q How did that experience effect your life?

20 A It impacted my life very well. My drill instructor, Mr.  
21 Smith, he worked with me closely. It was a lot of physical  
22 training as well as mental training. There I got to reinvent  
23 myself and what I wanted to do in life and I was on my way to,  
24 you know, become a better person.

25 Q Would you say that Lakeview turned your life around?

Watson - Direct - Flessner

23

1 A It did, sir.

2 Q When you were taken into custody by the ICE agents, where  
3 did they take you?

4 A They took me to a facility called Allegheny County.

5 Q Did the ICE agents tell you why they were detaining you?

6 A They said that I was not a citizen, that I was illegally  
7 here, they have a warrant for my arrest.

8 Q What did you tell them?

9 A I told them I was a citizen, I believe I'm a citizen.

10 Q When you told them that you are a United States citizen,  
11 what did they say to you?

12 A They told me that if I were indeed a citizen, I would see  
13 the Judge in 24 hours and I would be released.

14 Q Did you see a Judge within 24 hours?

15 A No, sir.

16 Q When is the-- did you see a Judge at all in the Allegheny  
17 County Jail?

18 A No, sir.

19 Q How long were in the Allegheny County Jail?

20 A Approximately a month, a month, little over a month, I  
21 think, sir.

22 Q And, do you recall approximately when you first saw a  
23 Judge, how long it was?

24 A I saw the Judge, June 25th of 2008.

25 Q So approximately six weeks after you were detained?

Watson - Direct - Flessner

24

1 A Yes, sir.

2 Q And where did you see this Judge?

3 A I saw the Judge at Buffalo Federal Detention Facility.

4 Q That is in Batavia, New York?

5 A Correct.

6 Q You had been transferred there?

7 A Yes, sir.

8 Q Did you give the ICE agents, after you were detained, any  
9 proof that you were a United States citizen?

10 A Yes, sir.

11 Q What did you give them?

12 A I gave them my father, naturalization certificate, as  
13 well as my legal mother, naturalization certificate.

14 Q And what did they say to you when you gave them these  
15 documents?

16 A Well, they didn't say anything. They said that they  
17 would submit it. That is the only thing.

18 Q They would submit it?

19 A Yes.

20 Q Do you know if that ever happened?

21 A I believe, no.

22 Q Did you have access to a law library when you were in the  
23 Allegheny County Jail?

24 A I was never aware that there was a law library there at  
25 Allegheny County Jail.



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25

1 Q Would you describe for the Court, how your arrest by the  
2 DHS, Department of Homeland Security affected you emotionally.

3 MR. MARUTOLLO: Objection, Your Honor. This is  
4 outside of the scope of this hearing. A question pertaining  
5 more to damages and not as to whether or not the plaintiff  
6 timely filed an administrative claim with the Government.

7 THE COURT: His emotions may have effected his  
8 ability to think clearly. I will allow it.

9 A It effected me dramatically. I mean, working hard in the  
10 program, going through the different classes that they have  
11 installed, you know, I was ready to just begin life. My  
12 parole was approved, and when that happened, I was devastated.  
13 I was confused and I didn't know what was going on, I became  
14 depressed.

15 Q Were you ever treated for your depression?

16 A Not while being incarcerated, no, sir.

17 Q Have you subsequently been treated for your depression?

18 A Yes, sir.

19 Q Did anyone ever tell you why you were transferred from  
20 Allegheny to the Buffalo Detention Center?

21 A That I would be able to see the Judge.

22 Q Did they tell you why it took so long, why it took  
23 six weeks before they could get you there?

24 A No, sir.

25 Q Do you remember a man by the name of Mr. Scott Schrader?

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26

1 A Yes, sir.

2 Q Who is Scott Schrader?

3 A Scott Schrader was one of the deportation officers that  
4 was assigned to my case.

5 Q Was Mr. Schrader helpful to you?

6 A I would say, no.

7 Q Did Mr. Schrader-- did you tell Mr. Schrader that you  
8 were a United States citizen?

9 A Yes, sir, I did.

10 Q Did you tell anyone else at the Buffalo Detention Center  
11 that you were a United States citizen?

12 A All of the deportation officers that were assigned to my  
13 case, that I told them the same thing over and over. That I  
14 was indeed a United States citizen.

15 Q How did Mr. Schrader react when you told him you were a  
16 United States citizen?

17 A Well, it has been awhile, I can't recall. I believe that  
18 the information that I got that the Judge would decide that.

19 Q Was he helpful to you in any way in your legal-- with  
20 your legal issues?

21 A No, sir.

22 Q Did any attorney represent you before the immigration  
23 Judge?

24 A No, sir.

25 Q Why not?

Watson - Direct - Flessner

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1 A I could not afford one.

2 Q Did you try to find an attorney?

3 A Yes, sir.

4 Q How did-- what did you do, explain to the Court?

5 A Well, I had got a paper with a bunch of attorney names.

6 Q Where did you get that?

7 A The Judge gave it to me.

8 Q And, did you call those attorneys?

9 A I did, sir.

10 Q And, tell the Court what happened?

11 A Well, when I called-- I have called all of them. They  
12 told me that they were-- I cannot attain them because they  
13 weren't free lawyers, basically. They only take free pro bono  
14 cases throughout the year, so they could not represent me in  
15 my case.

16 THE COURT: Before you ask the next question, I want  
17 it stipulated that any evidence given at this hearing may be  
18 used on the bench trial, on the Federal Tort Claims Act so we  
19 don't have to take it again.

20 MR. MARUTOLLO: Okay, Your Honor.

21 MR. FLESSNER: Okay.

22 Q Did you contact anybody at the Volunteer Lawyers Project?

23 A Yes, I did.

24 Q Did you ask them to represent you?

25 A Yes, I did.

Watson - Direct - Flessner

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1 Q What did they say?

2 A They said that they are just volunteer-- they are  
3 basically training, that they are not real lawyers, and that  
4 they could not assist me in my case.

5 Q So you represented yourself during the entire immigration  
6 proceeding?

7 A Yes, sir, correct.

8 Q How many times did you appear approximately before the  
9 immigration Judge?

10 A Five times, I believe.

11 Q And, did the immigration Judge order you to be removed?

12 A Yes, sir.

13 Q Do you know what an N-600 form is?

14 A Yes, sir.

15 Q Did the immigration Judge give you a form to-- so you  
16 could file for an N-600?

17 A Yes, sir.

18 Q Tell the Judge what an N-600 is?

19 A An N-600 is a citizenship application.

20 Q A certificate of citizenship?

21 A Yes, sir.

22 Q Did you apply for that?

23 A Yes, sir.

24 Q Did you receive that?

25 A No, sir.

Watson - Direct - Flessner

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1 Q After the immigration Judge ordered you removed, did you  
2 appeal that decision?

3 A Yes, sir.

4 Q Did it go before the board of immigration appeals?

5 A Yes, sir.

6 Q Was that decision affirmed?

7 A No, sir.

8 Q Meaning, did the immigration-- board of immigration  
9 appeals agree you should be removed?

10 A Yes.

11 Q Did you appeal that decision as well?

12 A Yes, sir.

13 Q Did you do all that yourself?

14 A No, sir.

15 Q Who helped you?

16 A Another detainee, a friend of mine.

17 Q Another person at the detention center?

18 A Yes, sir.

19 Q Was he a lawyer?

20 A No, sir.

21 Q Did the information you received about how to handle a  
22 removal proceeding, did you obtain that information from the  
23 law library?

24 A Excuse me, say that again.

25 Q The information that you learned about how to appeal your

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1 immigration case, did you learn that information from the law  
2 library?

3 A I would say, no and yes, sir.

4 Q Well, explain that for us.

5 A Well, the Judge gave me majority of the forms to fill out  
6 and my friend, he also assisted me with that help.

7 Q So the advice you were getting from your friend and from  
8 the immigration Judge, was that all relating to your  
9 immigration case?

10 A Yes, sir.

11 Q What was your legal focus while you were detained for  
12 three and a half years unconstitutionally?

13 MR. MARUTOLLO: Objection.

14 THE COURT: I will allow it.

15 A My sole concern, sir, was to terminate the removal  
16 proceeding and getting out of immigration custody.

17 Q Did you have any knowledge about filing a lawsuit against  
18 the United States?

19 A No, sir.

20 Q Did you even know that was possible?

21 A No, sir.

22 Q Did anyone-- any of the library-- recreation specialists  
23 or the agents at the detention center, did anyone say, you  
24 know, you have a case against the United States?

25 A No, sir.

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1 Q Did you even know before filing this case what an SF-95  
2 was?

3 A No, sir.

4 Q Had you ever seen one?

5 A No, sir.

6 Q Did you have access to one?

7 A No, sir.

8 Q Did you even know what it means to have your  
9 constitutional rights violated?

10 A No, sir.

11 Q Eventually did the Second Circuit appoint attorneys to  
12 help you in your removal proceeding?

13 A Yes, sir.

14 Q And, do you remember the names of those attorneys?

15 A One, Mark Door, I believe, from Gibson & Dunn.

16 Q And, did you have to pay them?

17 A No, sir.

18 Q What was your understanding about what the attorneys at  
19 Gibson & Dunn were going to assist you with?

20 A My BIA appeal decision.

21 Q I want to show you what is in this Exhibit V, in this  
22 book of exhibits. Do you have it in front of you?

23 A Yes, sir.

24 Q Turn to Exhibit V, please.

25 A Yes.

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1 Q Turn to the second page of that.

2 Do you recognize that-- those letters?

3 A Yes, sir.

4 Q Turn to the second page, please.

5 A Yes, sir.

6 Q What are these letters?

7 A This is the letter that Gibson, Dunn send me as a  
8 retainer.

9 Q Is this the letter telling you what they agreed to do for  
10 you?

11 A Yes, sir.

12 Q If you will look at the second paragraph of the letter  
13 dated April 26th, of 2011. I want you to read the first three  
14 sentences of that paragraph, please.

15 A Okay.

16 "We have agreed to represent you on a pro bono,  
17 no-fee basis, as set forth in the terms of retention. You are  
18 retaining us to provide legal services to you in connection  
19 with your Petition for review, Watson versus Holder, from a  
20 Board of Immigration Appeals, February 5th, 2009, audit  
21 removal. This will confirm that our engagement is limited to  
22 the matter just described and that we have not been retained  
23 generally, or for other matters."

24 Q Okay.

25 So, is it your understanding that Gibson & Dunn was



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1 appointed to represent you in your immigration case?

2 A Yes, sir.

3 Q For no other reason?

4 A Yes, sir.

5 Q Did you visit the law library when you were at the  
6 Buffalo facility?

7 A Yes, sir.

8 Q Tell us, describe for us the law library as you remember  
9 it?

10 A Well, it was very small and you had, I can't remember  
11 correctly, I believe there were three computers there. Maybe  
12 about four typewriters.

13 Q What kind of books were in there?

14 A Regular text books of immigration laws.

15 Q Did the books concern, as far as you know, just  
16 immigration proceedings?

17 A Yes, sir.

18 Q Look at-- can you turn to Exhibit W?

19 THE COURT: Now, I take it all these exhibits are in  
20 evidence you don't object.

21 MR. MARUTOLLO: We don't object to either Exhibit V  
22 or Exhibit W.

23 THE COURT: If you don't object, I will assume the  
24 exhibit is in evidence.

25 MR. FLESSNER: I don't need to move.

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1 THE COURT: No.

2 (So marked.)

3 Q Do you recognize Exhibit W?

4 A Yes, sir.

5 Q What is it?

6 A It is a sheet that shows the time that each unit is  
7 assigned to go to the law library.

8 Q Was there the capacity for the Buffalo Detention Center,  
9 was it approximately 650 detainees?

10 A I am not aware of that number, but there were possibly.

11 Q There were several hundred?

12 A Yes, sir.

13 Q And, this schedule shows when each tier was allowed to go  
14 to the library, correct?

15 A Yes, sir.

16 Q And, how many many people were allowed to go to the  
17 library at any one time?

18 A Well, from up to I believe twenty.

19 Q Twenty people at a time?

20 A Between-- yeah, up to twenty people.

21 Q And, what was the method by which you could be allowed to  
22 go to visit the library?

23 A You have a sign-in sheet in the unit, and you would sign  
24 your name and your bed number and you would go, at the  
25 specific time.

Watson - Direct - Flessner

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1 Q Do you ever remember seeing this document?

2 A Yes, sir.

3 Q On average, how many times a week did you go visit the  
4 library?

5 A I would say, on around three to four times.

6 Q How long did you stay when you were at the-- in the  
7 library?

8 A We could only stay for an hour.

9 Q Did you ever request additional time?

10 A No, sir.

11 Q Why not?

12 A I never knew that I had that right to do so.

13 Q Did anyone ever tell you you could request additional  
14 time?

15 A No, sir.

16 Q What was the kind of work you were doing when you were at  
17 the library?

18 A Well, I was trying to find cases that could make up my  
19 argument for the removal proceeding to prove that I was indeed  
20 a United States citizen.

21 Q So you could be released?

22 A Yes, sir.

23 Q Were you able to access the Internet on the library  
24 computers?

25 A No, sir.

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1 Q Were you able to access the Internet at any point while  
2 you were detained?

3 A No, sir.

4 Q Did anyone ever tell you that there were people who would  
5 do research for you if you wanted research done?

6 A No, sir.

7 Q Did you ever ask anyone to do research for you?

8 A No, sir.

9 Q Why not?

10 A I wasn't aware of those things. No one ever gave me  
11 those types of information that that was a possibility.

12 Q Did anyone ever tell you that there was a disc that was  
13 entitled "legal forms, short cut"?

14 A No, sir.

15 Q Did you ever see that disc?

16 A No, sir.

17 Q Did anyone ever tell you that disc was available to you?

18 A No, sir.

19 Q How many hours a day were you confined to your cell on  
20 average when you were at the Buffalo Detention Center?

21 A Again, I cannot recall the hours, but I would say, my  
22 fair guess about 18 hours.

23 Q Were you able to take legal books out of the library to  
24 your cell?

25 A No, sir.

Watson - Direct - Flessner

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1 Q So the legal books stayed in the library?

2 A Yes, sir.

3 Q Do you know what a detainee request is?

4 A Yes, sir.

5 Q What is it?

6 A Detainee request is a form that you will fill out, a  
7 detainee will fill out if you want to request anything from  
8 the law library or any other actions.

9 Q Did you ever request anything through a detainee request?

10 A Yes, sir.

11 Q Tell us what it was?

12 A I requested printouts that were at the law library.

13 Q What kind of printout?

14 A Printouts, drafts that I had made to put in my motions  
15 and my briefs that I didn't finish. So I didn't have time to  
16 print them out. So I requested for them to be printed out.

17 Q And, those were with respect to your immigration case?

18 A Yes, sir.

19 Q That is the only thing you were focused on?

20 A Yes, sir.

21 Q Do you know what a recreation specialist is?

22 A Yes, sir.

23 Q What is it?

24 A Well --

25 Q Who is it?

Watson - Direct - Flessner

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1 A Recreation specialist is someone that, he takes the  
2 detainees to the Gym, as far as I believe.

3 Q Were they ever in the-- was there a recreation specialist  
4 ever in the law library while you were there?

5 A No, I can't recall that.

6 Q Did they ever offer to help you with research?

7 A No, sir.

8 Q Did you know that they were able to do that for you?

9 A No, sir.

10 Q Did they ever tell you that?

11 A No, sir.

12 Q Were they helpful to you in your research?

13 A No, sir.

14 Q Or in your removal proceeding?

15 A No, sir.

16 Q Were the agents at the Buffalo Detention Center, were  
17 they prohibited from giving you legal advice?

18 A Say that again, sir.

19 Q Were they prohibited from giving you legal advice?

20 A Yes, sir.

21 Q Did you ever ask them for help?

22 A The detainee, sir?

23 Q Did you ever ask any of the agents?

24 A The agent, I'm sorry.

25 No, sir.

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1 Q Were they helpful to you?

2 A No, sir.

3 Q Did you ever attend any of the, know your rights,  
4 presentation while you were detained?

5 A Yes, sir.

6 Q What rights were the presenters at those presentations  
7 talking about?

8 A Well, they would just generally talking about immigration  
9 laws and to know your rights. That was about it.

10 Q Were they able to represent you?

11 A No, sir.

12 Q Were they lawyers?

13 A No, they were not.

14 Q Who were they?

15 A They were students.

16 Q Law students?

17 A Yes, sir.

18 Q At any point during the, know your rights presentations,  
19 did anyone ever tell you that you were able to sue the United  
20 States?

21 A Absolutely not.

22 Q At any point, while you were detained, did you learn from  
23 anyone, or anyone in any way inform you, that you had a right  
24 to sue the United States?

25 A No, sir.

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1 Q Was there anyone in the law library that was there to  
2 assist you?

3 A There was a detainee that was assigned as the Law Clerk.

4 Q What was the detainee Law Clerk's job?

5 A To assist other detainees with their legal materials.

6 Q Did they help you?

7 A No, sir.

8 Q What do the detainee law clerks do?

9 A Well, generally, they are also finding their own cases,  
10 and you know, personally, they didn't have time to help anyone  
11 else. They were more focused on their own case. I believe  
12 that they used the law library-- I believe that they used  
13 their position as a law clerk to get more time so that they  
14 could focus more on themselves.

15 Q Did the detainee law clerks have any legal training?

16 A No, sir.

17 Q At some point, you were transferred out of the Buffalo  
18 Detention Center, correct?

19 A Yes, sir.

20 Q And, where did you go then?

21 A I was transferred to a facility in Louisiana, which I  
22 can't remember the name.

23 Q How long were you there?

24 A I was there maybe about a week or two.

25 Q And then where did you go?



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1 A I was then transferred to a facility in Alabama called  
2 Etowah County.

3 Q And, were there-- when you were transferred out of the  
4 Buffalo Detention Center, did you have a filing that was due  
5 with the Board of Immigration?

6 A Yes, sir.

7 Q Approximately how long before-- how long after you were  
8 transferred was your filing due?

9 A I believe-- I can't remember, but I believe about  
10 four days or less.

11 Q Did the DHS contact your attorneys at Gibson Dunn to tell  
12 them where you were?

13 A No, sir.

14 Q Were they able to contact you when you were transferred?

15 A No, sir.

16 Q How did they finally find out where you were?

17 A Well, upon arrival at Etowah County, about a week later,  
18 I got a phone call. I was able to make a phone call to a  
19 cousin of mine that resided in Florida. I called her to call  
20 my immediate family in New York, to contact my lawyers, that  
21 is how they knew where I was.

22 Q The transfer out of the Buffalo Detention Center, did  
23 that interfere with your ability to file your memo with the  
24 Board of Immigration?

25 A Yes, sir.

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1 Q When were you ultimately released?

2 A I was released, I can't remember exactly, but I was  
3 released, I believe May of 2011.

4 Q Were you released on November 2nd of 2011?

5 A Yes, sir.

6 Q Describe for the Court what happened that day?

7 A Well, as I was in my cell in the unit, two officers  
8 approached me and said that to pack my stuff up immediately.  
9 I asked, why. I believed that I was being transferred to  
10 another facility because this was the pattern that they were  
11 using.

12 And I got down to the processing area and they said  
13 to put on my clothes. They gave me a paper with my picture on  
14 it and they pushed me out the door, and that was it. With no  
15 explanation or nothing.

16 Q What did you do?

17 A Well, I didn't know what to do, but I immediately just  
18 was confused. I didn't know anyone in Alabama, the State of  
19 Alabama, nor did I have a cellphone, nor did I have any money  
20 to do anything.

21 I basically walked around, and I found a gas station  
22 and there was this lady there, I asked her, politely, that I  
23 explained my situation, that I was stranded and I need help.  
24 Can I use her cellphone. I used the cellphone, and I called  
25 my cousin, where before I mentioned that resided in Florida.

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1 She booked a hotel in the area, I stayed overnight. My  
2 parents then booked a Greyhound bus ticket for me to come to  
3 New York the next day.

4 Q And what was your sole concern while you were detained at  
5 the-- while detained by DHS?

6 A My sole concern was to prove that I was a citizen and  
7 terminate removal proceedings.

8 Q Other than your other detainee friend, did anyone teach  
9 you anything about the law, provide you resources about the  
10 law, while you were detained?

11 A No, sir.

12 Q Did the agents or the guards ever give you legal advice  
13 or assist you?

14 A No, sir.

15 Q How much longer after you were released from the  
16 detention-- were your removal proceedings ongoing, do you  
17 recall?

18 A Two years, I believe.

19 MR. FLESSNER: No further questions.

20 THE COURT: All right. Take a short break.

21 MR. MARUTOLLO: Sure, Your Honor, thank you.

22 (Recess taken.)

23 THE COURT: Cross examination.

24 CROSS EXAMINATION BY MR. MARUTOLLO:

25 Q Good morning, Mr. Watson.

Watson - Cross - Marutollo

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1 A Good morning, sir.

2 Q Mr. Watson, May 8th, 2008, was the date that you entered  
3 into ICE custody, right?

4 A Correct, sir.

5 Q And instead of being released from the Lakeview  
6 incarceration program, on May 8th, 2008, you were detained by  
7 ICE agents; is that right?

8 A Correct, sir.

9 Q You were handcuffed by these ICE agents on May 8th, 2008?

10 A Yes, sir.

11 Q You were transported by these ICE agents in a van to the  
12 Allegheny County Jail on May 8th, 2008?

13 A Yes, sir.

14 Q On May 8th, 2008, you knew you were being detained by the  
15 Federal Government, correct?

16 A Yes, sir.

17 Q And according to you on May 8th, 2008, you immediately  
18 told the ICE officers, that you were in fact a United States  
19 citizen, right?

20 A Yes, sir.

21 Q You were certain that you were a United States citizen on  
22 May 8th, 2008, right?

23 A Yes, sir.

24 Q And in your motion to terminate the removal proceedings  
25 in the immigration court, you said that you were a citizen of

1 the United States, right?

2 A Yes, sir.

3 Q And you filed that motion on September 23rd, 2008?

4 A I'm not sure, but I believe so, sir.

5 Q And an additional immigration brief, you said that you  
6 were a U.S. citizen pursuant to Section 320 of the act, that  
7 is in Plaintiff's Exhibit H. You made that statement, right?

8 A Correct, sir.

9 Q In your motion to reinstate your position for review, you  
10 also said you were a citizen, a U.S. citizen as well, right?

11 A Yes, sir.

12 Q That is dated September 25th, 2009, that is Plaintiff's  
13 Exhibit V?

14 A I believe so, yes, sir.

15 Q And, in this current case, in your August 10th, motion,  
16 it is indicated that quote, when officials denied your  
17 citizenship you went to great lengths to prove your  
18 citizenship, right?

19 A Say that again, sir.

20 Q In the current brief, the supplemental brief in this case  
21 dated August 10th, 2015, filed by your attorneys in this case,  
22 the statement says, when officials denied your citizenship you  
23 went to great lengths to prove your citizenship, right?

24 A Correct, sir.

25 Q And, according to this brief, it says you expeditiously

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1 obtained a copy of your father's U.S. naturalization  
2 certificate to verify your citizenship, right?

3 A Yes, sir.

4 Q And, when you were in Allegheny, you were able to give an  
5 ICE officer, a copy of your father's certificate, right?

6 A Yes, sir.

7 Q And, when you were in Batavia at the Buffalo Federal  
8 Detention Facility, you obtained copies of the certificate of  
9 naturalization for your biological father, right?

10 A Yes, sir.

11 Q And according to your August 10th, 2015 brief, you didn't  
12 give up after U.S.C.I.S. denied your application for  
13 citizenship, right?

14 A No, sir.

15 Q You filed an appeal, right?

16 A Correct, sir.

17 THE COURT: An application for citizenship?

18 MR. MARUTOLLO: To prove his citizenship that he  
19 was.

20 THE COURT: An application to prove it.

21 MR. FLESSNER: There is a certificate you can get.

22 Q Well, when the United States-- when the U.S.C.I.S. denied  
23 application for citizenship, plaintiff in his brief said he  
24 did not give up and timely filed an appeal.

25 MR. FLESSNER: Excuse me, it is not an application

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1 for citizenship, application for certification of citizenship.

2 THE COURT: I understand that.

3 MR. MARUTOLLO: To be clear, I was reading from the  
4 brief which indicates, application for citizenship.

5 THE COURT: Right.

6 Q On May 8th, 2008, Mr. Watson, you believed that you were  
7 not supposed to be detained by ICE, right?

8 A Yes, sir.

9 Q And so ultimately Mr. Watson, May 8th, 2008, is according  
10 to you, the date that you alleged your unlawful detention  
11 began, right?

12 MR. FLESSNER: Objection, that is a legal  
13 conclusion.

14 THE COURT: I will allow it.

15 If you can answer it, if you can't, don't answer it.

16 A Can you restate the question again, sir.

17 Q On May 8th, 2008, according to you, that is the date that  
18 you alleged your unlawful detention began, correct?

19 A Well, to be honest, I wasn't sure what was going on,  
20 because I was told that I would see a Judge in 24 hours. I  
21 would be released. So, I would-- I would generally say, yes.

22 MR. MARUTOLLO: Your Honor, may I provide, I don't  
23 believe he has it there, a copy of his deposition transcript  
24 for the witness.

25 THE COURT: Yes, of course.

Watson - Cross - Marutollo

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1 (Hanging.)

2 Q Mr. Watson, you had your deposition taken on July 23rd,  
3 2015, right?

4 A Yes, sir.

5 Q At that deposition, you were asked questions?

6 A Yes, sir.

7 Q You gave answers to those questions?

8 A Yes, sir.

9 Q You swore to tell the truth when answering those  
10 questions, that is the same oath, in sum and substance you  
11 took today?

12 A Yes, sir.

13 THE COURT: Excuse me, do you have another copy?

14 MR. MARUTOLLO: Yes, Judge.

15 THE COURT: Thank you very much.

16 It is marked in evidence --

17 Q Turning your attention to page --

18 THE COURT: -- as Court Exhibit 1.

19 (So marked.)

20 Q Turning your attention Mr. Watson to page 19, lines 24  
21 through page twenty, lines two.

22 Did you give the following answer to the following  
23 question:

24 QUESTION: "Was May 8th, 2008, the date you allege  
25 your unlawful detention began?"



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1           ANSWER: "Yes."

2           Did you give that answer to that question?

3   A     Yes, sir.

4   Q     And Mr. Watson, you on November 23rd, 2004, you were  
5   previously convicted of attempted robbery in the second degree  
6   in Kings County, New York, right?

7   A     Yes, sir.

8   Q     On January 26th, you were sentenced to-- January 26th,  
9   2005, you were sentenced to 30 days in jail and five years  
10   probation in connection with that November 2004 conviction,  
11   right?

12   A     Yes, sir.

13   Q     On February 22nd, 2006, you were sentenced to an  
14   additional eight months incarceration for violation of  
15   probation, right?

16   A     Yes, sir.

17   Q     And on September 18th, 2007, you were convicted of the  
18   attempted criminal sale of cocaine in the third degree, in New  
19   York County, Supreme Court; is that correct?

20           MR. FLESSNER: Your Honor, can I just object. I'm  
21   not sure what any of this has to do with equitable tolling.

22           THE COURT: Well, I suppose it relates, to some  
23   extent to credibility.

24           MR. MARUTOLLO: As well as his knowledge of  
25   proceedings.

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1 THE COURT: All right. I will allow it.

2 Q Would you like me to repeat the question?

3 A Please.

4 Q So on September 18th, 2007, you were convicted of  
5 attempted criminal sale of cocaine in the third degree,  
6 pursuant to a judgement in the Supreme Court, New York County;  
7 is that right?

8 A Yes, sir.

9 Q And you had a lot of experience with court proceedings  
10 throughout your criminal history, right?

11 MR. FLESSNER: Objection.

12 A No, sir.

13 MR. FLESSNER: Objection to the form of the  
14 question.

15 Q You appeared in court multiple times in connection with  
16 your criminal proceedings, correct?

17 A Yes, sir.

18 Q So, Mr. Watson, going back, after being handcuffed by ICE  
19 agents on May 8th, 2008, you're next transported to Allegheny  
20 County Jail?

21 A Yes, sir.

22 Q You were in ICE custody at the Allegheny County Jail  
23 between May 8th, 2008, and June 23rd, 2008; is that right?

24 A Yes, sir.

25 Q And while at the Allegheny County Jail, you never filed

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1 any administrative claim related to your detention with any  
2 Government agency, right?

3 A No, sir.

4 Q No you did not file any such claim?

5 A Sir, I did not know anything about that. I don't know  
6 what-- an administrative claim was. I didn't know anything  
7 about what you are mentioning, sir.

8 Q While at the Allegheny County Jail, you did not ask  
9 anyone about how to file an administrative claim?

10 A Again, sir, I didn't understand what was going on, I  
11 don't have no knowledge.

12 THE COURT: Just answer the question.

13 THE WITNESS: Yes, sir, I'm sorry, sir.

14 THE COURT: The answer is, you did not file,  
15 correct?

16 THE WITNESS: Yes, sir, I apologize.

17 THE COURT: Thank you.

18 Q And while at the Allegheny County Jail, you did not try  
19 to file any claim pertaining to your ICE detention, correct?

20 A No, sir.

21 Q And no one prevented you in filing any claim pertaining  
22 to your ICE detention while at the Allegheny County Jail,  
23 right?

24 A No, sir.

25 Q And you were never denied access to using the mail at the

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1 Allegheny County Jail, right?

2 A No, sir.

3 Q You were never denied access to using the telephone at  
4 the Allegheny County Jail, right?

5 A No, sir.

6 Q On June 23rd, 2008, you were transferred from the  
7 Allegheny County Jail to the Buffalo Detention Facility,  
8 right?

9 A Yes, sir.

10 Q And you stayed at that Buffalo Federal Detention Facility  
11 until October 24th, 2011; is that right?

12 A Yes, sir.

13 Q So the bulk of your detention was at the Buffalo Federal  
14 Detention Facility, right?

15 A Say that again.

16 Q The bulk of your detention was actually at the Buffalo  
17 Federal Detention Facility?

18 A Correct, sir.

19 Q So upon entering the Buffalo Federal Detention Facility,  
20 you were given a copy of the Buffalo Federal Detention  
21 Facility detainee handbook, right?

22 A Yes, sir.

23 Q The detainee handbook sets forth resources available at  
24 the facility, right?

25 A Yes, sir.

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1 Q And, while at the Buffalo Federal Detention Facility, you  
2 had access to the law library, right?

3 A Yes, sir.

4 Q You testified on your direct examination, that you  
5 obtained some information from the law library, right?

6 A Yes, sir.

7 Q You also testified during your direct examination, that  
8 you did not ask any staff for help; is that right?

9 A Yes, sir.

10 Q Now, you went to the law library at least twice a week,  
11 over the course of your three plus years at the Buffalo  
12 Federal Detention Facility?

13 A I would say, three times, three to four times of out of  
14 the week.

15 Q So let's step back for a moment. Talk about the  
16 resources available at the Buffalo Detention, Federal  
17 Detention Facility law library.

18 While at the Buffalo Detention Facility, you had  
19 access to books in the law library, right?

20 A Yes, sir.

21 Q You read legal books in the law library, right?

22 A Some of them, sir, yes. Yes, sir.

23 Q In fact you read about seven law books in the law  
24 library?

25 A I don't recall saying that, sir.

1 Q Drawing your attention to your deposition, page 147,  
2 lines four through 17. Did you give the following answers to  
3 the following questions:

4 QUESTION: "Approximately how many law books were  
5 available at the Buffalo Federal Detention Facility law  
6 library?

7 ANSWER: "I'm not sure available."

8 QUESTION: "About how many books did you observe at  
9 the Buffalo Federal Detention Facility law library?"

10 ANSWER: "I don't know, I went through, I read a few  
11 of them."

12 QUESTION: "Did you use more than ten law books  
13 while you were at the Buffalo Federal Detention Facility?"

14 ANSWER: "I looked into maybe about seven of them."

15 Did you give that testimony, Mr. Watson?

16 A Yes, sir.

17 Q And, there were legal manuals and federal rule books  
18 available in the law library, right?

19 A I believe so, sir.

20 Q And no one prevented you from reading any of the books in  
21 the Buffalo Federal Detention Facility, right?

22 A No, sir.

23 Q So let's turn to go to another resource at the Buffalo  
24 Facility, computers, and LexisNexis. So first, you had access  
25 to computers in the Buffalo Detention Facility, right?

1 A Yes.

2 Q And also typewriters?

3 A Yes, sir.

4 Q And you had access to the research program LexisNexis, on  
5 the computers, right?

6 A Yes, sir.

7 Q And, you conducted general searches on LexisNexis, right?

8 A Yes, sir.

9 Q You prepared filings for the Court, based on cases that  
10 you found on LexisNexis, right?

11 A Yes, sir.

12 Q And in fact, your filings all argue that you were a  
13 citizen, right?

14 A Yes, sir.

15 Q And that you shouldn't have been detained, right?

16 A Yes, sir.

17 Q And no one prevented you from using LexisNexis, right?

18 A No, sir.

19 Q And, as noted in your August 10th, brief, on page twelve  
20 of your August 10th brief, during the immigration removal  
21 proceeding, you asked the Immigration Judge, quote, is the law  
22 available in the Lexis program they have here, because I would  
23 like to look into it myself.

24 You gave that statement, correct?

25 A Yes, sir.

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1 Q So let's turn to another resource. While at the Buffalo  
2 Detention Facility, you had ability to make requests to staff  
3 members, right?

4 A Yes, sir.

5 Q And no one prevented you from making requests to staff,  
6 right?

7 A No, sir.

8 Q And you actually completed eleven detainee requests to  
9 staff while at the Buffalo Federal Detention Facility, right?

10 A I do not recall that, sir.

11 Q I have actually handed you, within that binder, that is  
12 directly in front of you, Mr. Watson, there are a number of  
13 exhibits.

14 Showing you, if you look at Exhibit N.

15 Mr. Watson, are you at Exhibit N?

16 A Yes, sir.

17 Q Does this refresh your recollection as to the fact that  
18 you filed 11 detainee requests to staff?

19 A Yes, sir.

20 Q And you completed requests to staff only about your  
21 immigration case, right?

22 A Yes, sir.

23 MR. MARUTOLLO: Your Honor, we move Exhibit N into  
24 evidence.

25 THE COURT: Yes.



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1 MR. FLESSNER: No objection.

2 (So marked.)

3 Q Mr. Watson, to be clear, no one prevented you from making  
4 requests to staff, right?

5 A No, sir.

6 Q While at the Buffalo Federal Detention Facility, Mr.  
7 Watson, you spoke with detainees who worked in the law  
8 library?

9 A Yes, I did, sir.

10 Q No one prevented you from speaking to detainees about  
11 legal issues, right?

12 A No, sir.

13 Q Let's speak about a few more resources available in  
14 Buffalo. You were given access to paper, pens, envelopes,  
15 correct?

16 A Yes, sir.

17 Q And, you while in the Buffalo facility, you mailed and  
18 received letters, correct?

19 A Yes, sir.

20 Q And, while at the Buffalo Detention Facility, you were  
21 never denied the use of mail, correct?

22 A No, sir.

23 Q While at the Buffalo Federal Detention Facility, you also  
24 made telephone calls about one to five times a day, right?

25 A Yes, sir.

1 Q And you called your attorneys from the telephone at the  
2 Buffalo Federal Detention Facility, right?

3 A Yes, sir.

4 Q So, let's be clear, while you were at the Buffalo Federal  
5 Detention Facility, you had access to the following resources,  
6 access to legal books, computers, LexisNexis, staff to whom  
7 you could make requests, detainees who worked in the law  
8 library, the use of mail, telephone calls, and your attorneys;  
9 is that right?

10 A Yes, sir.

11 Q And despite all these resources, you claim you had no  
12 access to information about filing an administrative claim  
13 related to your detention, right?

14 A Correct, sir.

15 Q At the same time, you used these resources when filing  
16 your many motions and briefs in connection with your  
17 immigration proceedings, right?

18 A Yes, sir.

19 Q So let's just talk briefly about some of the legal  
20 filings you did make with regard to your immigration  
21 proceeding.

22 First, you filed an N-600 application with the  
23 Federal Government, correct?

24 A Yes, sir.

25 Q And, you learned about filing the N-600 because according

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1 to you, it was just common knowledge at the facility, Buffalo  
2 facility, right?

3 A Yes, sir.

4 Q And according to you, Buffalo facility officials would  
5 give papers with all the different forms, you could fill out;  
6 is that right?

7 A Yes, sir.

8 Q And, there is also a wall at the Buffalo facility of  
9 commonly used forms; is that right?

10 A Yes, sir.

11 Q And according to you, it was very easy to fill out the  
12 N-600 because according to you, you can read and write, isn't  
13 that correct?

14 A Yes, sir.

15 Q And, you didn't need an attorney to fill out the N-600  
16 form, according to you?

17 A No, sir.

18 THE COURT: What Exhibit number is that, that form?

19 MR. MARUTOLLO: I don't believe there is actually an  
20 exhibit, the N-600 form. It maybe for the plaintiff.

21 THE COURT: I would like to look at it.

22 MR. FLESSNER: I don't know if I-- if I don't have  
23 it, I will make a copy of it and-- I think I do have it. I  
24 will find it. I think I do have it.

25 THE COURT: Fine, go ahead.

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1 Q And Mr. Watson, you didn't get any help to fill out the  
2 N-600 form?

3 A If I got help?

4 Q You did not get any help to fill out the N-600 form,  
5 right?

6 A Yes, sir.

7 Q Yes, you did not get any help?

8 A I did get help, sir.

9 Q One moment, Your Honor.

10 Mr. Watson, turning your attention to page 133,  
11 lines 9 through 11 of your deposition transcript. Did you  
12 give the following answer to the following question:

13 QUESTION: "Did you speak with anyone in preparing  
14 the N-600?"

15 ANSWER: "No."

16 Did you give that answer to that question?

17 A Yes, sir.

18 Q You also, once your N-600 was denied, you filed a notice  
19 of appeal, right, with the Federal Government?

20 A Yes, sir.

21 Q And you obtained this notice of appeal form, on the  
22 Buffalo Federal Detention Facility computer system, right?

23 A Say that again, sir.

24 Q You obtained the notice of appeal form, on the Buffalo  
25 Federal Detention Facility's computer system, right?

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1 A Sir, when I gave that statement, sir, I specifically said  
2 that I didn't remember exactly how I went about. But I  
3 believe to my knowledge, that the Judge gave me a bunch of  
4 appeal forms, sir, to be correct.

5 Q So Mr. Watson, let me draw your attention back to your  
6 deposition transcript on page 138, at lines 17 through 24.  
7 Did you give the following answer to the following question:

8 QUESTION: "Where did you obtain this form, I-290B  
9 notice for appeal or motion, that is on the document Bates  
10 number A FILE 190-A to 191?"

11 ANSWER: "I believe it was on the computer."

12 QUESTION: "When you say, it was on the computer, how  
13 did you access itself on the computer?"

14 ANSWER: "It's in the computer system."

15 Did you give that answer to that question?

16 A Yes, sir.

17 Q And you knew where to mail the notice of appeal, because  
18 according to you, the Buffalo Federal Detention Facility had a  
19 paper stating who to mail different forms to, which Court or  
20 District Court, isn't that right?

21 A Yes, sir.

22 Q And while at the Buffalo Federal Detention Facility, you  
23 also filed a Petition for review of an immigration matter,  
24 right?

25 A Yes, sir.

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1 Q And, while at the Buffalo Federal Detention Facility and  
2 after your Petition for review is denied, you also filed a  
3 motion to reinstate your Petition for review, right?

4 A Yes, sir.

5 Q And in this reinstatement motion, you cited these cases  
6 that you found via the Buffalo Federal Detention Facility  
7 LexisNexis research tool, right?

8 A Yes, sir.

9 Q So let me get this straight, according to you, the  
10 resources at the Buffalo Federal Detention Facility were  
11 sufficient for you to file all these motions related to your  
12 detention, but the facility's resources were not sufficient to  
13 file an administrative claim pertaining to your detention?

14 A Well, sir, I would go to answer this question according  
15 to -- well, I had no knowledge of what an administrative claim  
16 was at that specific time, during the entire time of my  
17 detention. I was-- my sole concern was to prove my case of  
18 citizenship.

19 Q Mr. Watson, while at the Buffalo Federal Detention  
20 Facility, you admit that you did not educate yourself about  
21 complaints that you could file, related to your underlining  
22 detention, right?

23 A Yes, sir.

24 Q And you did not ask anyone, in Buffalo Federal Detention  
25 Facility about how to file an administrative claim with the

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1 Government, right?

2 A Absolutely not, no, sir.

3 Q There were no extraordinary circumstances at the Buffalo  
4 Federal Detention Facility that stood in your way of pursuing  
5 your legal, your administrative claims, right?

6 MR. FLESSNER: Objection to the form of the  
7 question.

8 THE COURT: If you can answer it, answer it, if you  
9 can't, say I can't answer it.

10 A I cannot answer that.

11 Q There were no extraordinary circumstances in your way--

12 MR. FLESSNER: Same objection, it is the same  
13 question.

14 A I can't answer that.

15 MR. FLESSNER: He just answered that.

16 Q Mr. Watson, you were not acting diligently to pursue your  
17 administrative claims, were you?

18 MR. FLESSNER: Objection.

19 THE COURT: You can answer it if you can or say, you  
20 can't answer it.

21 A Can you restate that question differently. I don't  
22 understand what you mean.

23 Q You were not acting to pursue your administrative claims,  
24 right?

25 A Sir, again, I did-- my sole concern was getting my

1 freedom of terminating removal proceeding, proving that I was  
2 United States citizen.

3 Q And, there were no circumstances at the Buffalo Federal  
4 Detention Facility that prevented you from filing an  
5 administrative claim, right?

6 A Sir, again, I didn't know what an administrative claim  
7 was. Again, my sole concern was proving that I was a United  
8 States citizen.

9 Q So is that a "yes" or "no"?

10 MR. FLESSNER: Objection.

11 THE COURT: You can say, I can't answer it, yes or  
12 no.

13 A I can't answer that question.

14 Q So apart from your lack of knowledge, about the process,  
15 there were no obstacles that would have prevented you from  
16 filing an administrative claim while you were at the Buffalo  
17 Detention Facility, right?

18 MR. FLESSNER: Objection.

19 THE COURT: If you can answer it, say.

20 A I cannot answer that question.

21 Q Why not? What can't you answer that question?

22 A Sir, I'm politely saying this, that I had no knowledge  
23 what an administrative claim was. I had no knowledge of  
24 anything of that sort.

25 My sole concern was proving that I was a United



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1 States citizen, thus returning to my family, terminating  
2 removal proceeding.

3 Q But Mr. Watson, nothing at the facility prevented you  
4 from obtaining the knowledge to file an administrative claim,  
5 right?

6 A I cannot answer that question.

7 THE COURT: You can say, I don't know, I can't  
8 answer, yes or no.

9 THE WITNESS: I don't know.

10 Q So, after the Buffalo Federal Detention Facility you were  
11 transferred to the Tensas Parish Detention Center Louisiana;  
12 isn't that right?

13 A Yes.

14 Q Then you were sent to the Etowah County Jail in Alabama,  
15 right?

16 A Yes, sir.

17 Q This was in the fall of 2011?

18 A Yes, sir.

19 Q And in both the Alabama and Louisiana facility, you did  
20 not file any administrative claims against the Federal  
21 Government, right?

22 A No, sir.

23 Q And in both the Alabama and Louisiana facility, you did  
24 not ask anyone about how to file an administrative claim,  
25 right?

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1 A No, sir.

2 Q Yet you are here today, claiming your detention in all of  
3 these facilities is wrong, correct?

4 A Yes, sir.

5 Q And, looking back on the entirety of your ICE detention,  
6 you did not suffer from any disability that prevented you from  
7 filing a lawsuit pertaining to your ICE detention, right?

8 MR. FLESSNER: Objection.

9 THE COURT: You mean his physical or mental?

10 MR. MARUTOLLO: That's correct.

11 A No, sir.

12 Q And you did not suffer from any physical or mental  
13 ailments that prevented you from filing an administrative  
14 claim against the Federal Government?

15 MR. FLESSNER: Objection.

16 THE COURT: You may answer.

17 A No, sir.

18 Q During your entire ICE detention no one prevented you  
19 from filing an administrative claim pertaining to your ICE  
20 detention, right?

21 MR. FLESSNER: Objection, asked and answered.

22 THE COURT: You may answer.

23 A I do not know how to answer that question.

24 Q Let me turn your attention to page 84 of your deposition.

25 A Say that again, 84?

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1 Q Yes, page 84, lines 21 through 24.

2 Did you give the following answer to the following  
3 question:

4 QUESTION: "Did anyone prevent you at any point  
5 during your ICE detention from filing an administrative or  
6 legal claim?"

7 ANSWER: "No, sir."

8 Did you give that answer to that question?

9 A Yes, sir.

10 Q You were never induced or tricked by any Government  
11 employee into allowing any filing deadlines to pass, right?

12 A Can you repeat that question, again, sir.

13 Q You were never induced or tricked by any Government  
14 employee into allowing any filing deadlines to pass, right?

15 A No, sir.

16 Q Let me again turn your attention to your deposition page  
17 84.

18 MR. FLESSNER: He said, no.

19 Q So, no, you did not get it-- thank you Mr. Watson.

20 So to sum up, at no point during your entire ICE  
21 detention, you did not file any administrative claim  
22 pertaining to your detention, right?

23 A Correct, sir.

24 Q You also never filed any Petition for a writ of habeas  
25 corpus at any point during your ICE detention, right?

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1 A Correct, sir.

2 Q After you were released from ICE detention on  
3 November 2nd, 2011, you went to your aunt's house in Brooklyn,  
4 right?

5 A Yes, sir.

6 Q You personally had access to the Internet after being  
7 released from ICE detention, right?

8 A Yes, sir.

9 Q Even though you were happy to be released from ICE  
10 custody, you were still upset about your alleged unlawful  
11 detention, right?

12 A Yes, sir.

13 Q Even though you were upset, you still did not conduct any  
14 searches on the Internet about remedies available to you,  
15 right?

16 A No, sir.

17 Q So even after your release, you didn't research anything  
18 related to your claims of false imprisonment, malicious  
19 prosecution or negligence, right?

20 A Sir, I would say, no, but because the fact that I did not  
21 know that I had those rights. I didn't know what my rights  
22 were. I didn't know the reason why I was being released.

23 My case was still in the Second Circuit, sir. So I  
24 didn't have any knowledge of that I was-- you know, entitled  
25 to anything of that sort. So, there was no reason for me to

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1 go to search for that, for, you know, on line for any claims  
2 or ways or procedures of where to file claims.

3 Q Still the answer is, you did not research any of those  
4 claims?

5 A No, sir.

6 Q So, even when you are out of ICE detention, you still  
7 didn't pursue your administrative claims, right?

8 A Correct, sir.

9 Q Now, I would like to talk to you for a moment about your  
10 attorneys during your immigration proceedings.

11 During your ICE detention you obtained counsel from  
12 Gibson & Dunn; is that right?

13 A Yes, sir.

14 Q And, you retained counsel from Gibson & Dunn law firm as  
15 early as April 2011, right?

16 A Yes, sir.

17 Q And that is when you were still at the Buffalo Federal  
18 Detention Facility?

19 A Yes, sir.

20 Q You spoke via telephone to your Gibson, Dunn attorneys at  
21 least twenty times, while you were in federal detention  
22 facility and at least twenty times, after you were released  
23 from federal detention, right?

24 A Yes, sir.

25 Q So that is at least forty times overall that you spoke to

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1 your attorneys?

2 A Yes, sir.

3 Q While at the Buffalo Facility, you received letters from  
4 your Gibson, Dunn attorneys, right?

5 A Yes, sir.

6 Q You were never prevented from meeting with your Gibson,  
7 Dunn attorneys, right?

8 A No, sir.

9 Q And your Gibson, Dunn attorneys appeared on your behalf  
10 in court and filed motions on your behalf, right?

11 A Yes, sir.

12 Q And your Gibson, Dunn attorneys gave you legal advice,  
13 right?

14 A Yes, sir.

15 Q And according to you, you had one conversation with the  
16 Gibson, Dunn attorney, about filing an administrative claim,  
17 pertaining to your ICE detention, right?

18 A Yes, sir.

19 Q And, you are not sure when that conversation with your  
20 Gibson, Dunn attorneys occurred, right?

21 A No, sir.

22 Q But you know that the conversation was in person,  
23 correct?

24 A Yes, sir.

25 Q And, that your Gibson, Dunn attorney initiated the

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1 conversation about filing an administrative claim with you,  
2 right?

3 A Yes, sir.

4 Q But even after you had this conversation, you still did  
5 not file an administrative claim pertaining to your ICE  
6 detention, right?

7 A No, sir.

8 Q And now, Mr. Watson, in addition to your Gibson, Dunn  
9 attorneys, you also had attorneys from National Immigrant  
10 Justice Center, right?

11 A Yes, sir.

12 Q You retained counsel from this Justice Center in 2014,  
13 right?

14 A Yes, sir.

15 Q You also had at least one conversation with attorneys  
16 from the National Immigrant Justice Center about filing an  
17 administrative claim pertaining to your ICE detention, right?

18 A Yes, sir.

19 Q This conversation with the National Immigrant Justice  
20 Center attorney pertaining to the filing of an administrative  
21 claim, occurred in some point between 2013 and 2014, right?

22 A Yes, sir.

23 Q And even after this conversation, you still did not file  
24 an administrative claim pertaining to your ICE detention?

25 A No, sir.

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1 Q So despite having attorneys from Gibson, Dunn and the  
2 National Immigrant Justice Center and despite having  
3 conversations with them about filing an administrative claim,  
4 you didn't file your standard form 95 here until October 30th,  
5 2013, right?

6 A Yes, sir.

7 Q And according to you, you claim that you didn't know what  
8 an SF-95 was, until October 30th, 2013, the day it was  
9 actually filed, right?

10 A Correct.

11 Q And you claim that you did not even contemplate an SF-95  
12 until October 30th, 2013, the date it was actually filed,  
13 right?

14 A Correct, sir.

15 Q And you did not-- and, you ultimately filed this lawsuit  
16 more than six years after May 8th, 2008, the date that you  
17 originally were detained by ICE, right?

18 A Correct, sir.

19 MR. MARUTOLLO: No further questions, Your Honor.

20 THE COURT: Any redirect?

21 REDIRECT EXAMINATION BY MR. FLESSNER:

22 Q Mr. Watson did you suffer from depression while you were  
23 detained?

24 A Yes, sir.

25 MR. FLESSNER: No further questions.



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1           THE COURT: All right. Thank you, do you have  
2 another witness?

3           MR. FLESSNER: That is it.

4           THE COURT: The plaintiff rests?

5           Do you want to make a motion?

6           MR. MARUTOLLO: Yes, Your Honor, we would move as a  
7 matter of law that the plaintiff has not met his burden to  
8 show equitable tolling in this case, for the reasons set forth  
9 during the plaintiff's examination, as well as for the reasons  
10 set forth in our moving papers and supplemental papers.  
11 Ultimately he has not shown he has been pursuing his rights  
12 diligently.

13           He has shown-- the plaintiff has not met his burden  
14 in establishing that any extraordinary circumstances stood in  
15 his way.

16           And, ultimately, Your Honor, the fact that he claims  
17 ignorance of the law, that is not sufficient for purposes of  
18 getting equitable tolling.

19           Further, the fact that his concern was about his  
20 detention, is not sufficient to carry his burden. The law  
21 doesn't recognize the plaintiff's focus on his underlining  
22 immigration proceeding or for that matter, underlying criminal  
23 proceeding in another wrongfully detained case, as a basis for  
24 postponing accrual. Otherwise, all inmates would have that  
25 benefit and ignorance of the law, would be a motivating factor

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1 for detainees and inmates to not pursue the claims until they  
2 can obtain a lawyer at a later point.

3 So, Your Honor, we think that the plaintiff has not  
4 met his burden to establish equitable tolling in this case and  
5 the reasons we set forth in the moving papers as well.

6 THE COURT: Now, after you were released, you didn't  
7 immediately receive citizenship papers for yourself, did you?

8 THE WITNESS: No, I did not, sir.

9 THE COURT: Did you still think that they were  
10 denying you your citizenship rights?

11 THE WITNESS: Yes, sir, absolutely.

12 THE COURT: To be free of detention as a non  
13 citizen.

14 THE WITNESS: Repeat that again, sir I'm sorry.

15 THE COURT: Did you believe that you were being  
16 denied the right to be free of detention as if you were-- free  
17 of detention as a citizen.

18 THE WITNESS: Yes, sir.

19 THE COURT: So you believed you had a right to be  
20 released.

21 THE WITNESS: Yes, sir.

22 THE COURT: At every moment while you were detained?

23 THE WITNESS: Well, I would say this, sir, that when  
24 I was being denied-- when the Judge Reid from Buffalo  
25 Detention Facility denied my case, and ordered me removed, I

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1 started having little doubts, but I still trying to have faith  
2 because I read the law. And you know, the words, shouldn't be  
3 changed around. It should be dealt according to what it says.  
4 So, I just had faith and trying to prove my case.

5 When I was released from the facility in Etowah  
6 County, I was given information about-- I wasn't given no  
7 information. Nor did any lawyer know where I was, until late,  
8 when he did reach out to call a family member. My lawyers  
9 weren't told where I was.

10 I was confused-- then it took two years for them to  
11 issue a citizenship certificate. I could not work, I was  
12 depressed. I started doing drugs.

13 My grandfather died and that got me depressed, I was  
14 not able to go to his funeral. I became homeless and I  
15 suffered a lot.

16 To this day, right now, I'm in a Christian, a  
17 Christian drug program called Anchor House, because for all  
18 those years, I have been so depressed and I turned to drugs  
19 which have destroyed my life. I'm in this program now and I'm  
20 in school and I'm doing a little better. I'm getting the help  
21 I need and assistance through this program.

22 I didn't have no -- I wasn't sure until I won the  
23 Second Circuit case, that I was indeed a citizen. I had faith  
24 that I was, but I started having doubts, Your Honor.

25 THE COURT: Are you free of drugs today, while you

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1 are testifying?

2 THE WITNESS: Yes, sir.

3 THE COURT: Is your mind clear?

4 THE WITNESS: Yes, sir.

5 THE COURT: Now, when did you receive the  
6 certificate?

7 THE WITNESS: I received the certificate, in the  
8 year 2013. I don't believe the exact date.

9 THE COURT: At that point, were you clear that you  
10 were a citizen.

11 THE WITNESS: Yes, sir.

12 THE COURT: Up to that point, as I understand it,  
13 you were dubious about it, because of the Judge's advice to  
14 you.

15 THE WITNESS: Yes, sir.

16 THE COURT: Why did you file this lawsuit, this  
17 particular lawsuit? How did you get to this attorney?

18 THE WITNESS: Well, it was through the lawyers at  
19 Gibson & Dunn. I met with them briefly, one time, and we sat  
20 down and they spoke about it because when I--

21 THE COURT: How did you get to the attorney?

22 THE WITNESS: Gibson & Dunn helped me.

23 THE COURT: The original attorney?

24 THE WITNESS: Right.

25 THE COURT: When did you call them?

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1 THE WITNESS: Excuse me, sir?

2 THE COURT: When did you call them, after you were  
3 released?

4 THE WITNESS: Well, they were assigned to me, I  
5 believe April of 20-- Gibson, Dunn, April of 2011, I would  
6 say, around there.

7 So I had relationship with them up until that point,  
8 where I was released, I was still talking to them. And you  
9 know, based on the decision of my Second Circuit case, that  
10 was the only time that I was absolutely certain now that I was  
11 a United States citizen.

12 This is when we-- we never met before, prior to that  
13 in person. After that date, I went to their office and we  
14 spoke.

15 So, basically, based off my-- the ruling of the  
16 Court, that I was indeed a United States citizen, that is when  
17 I was certain, and that is when the conversation came about as  
18 far as any type of damages claim.

19 THE COURT: So you received this certificate of  
20 citizenship then on November 26, 2013?

21 THE WITNESS: Yes, sir.

22 THE COURT: And was it after that that you decided  
23 to sue?

24 THE WITNESS: Yes, sir.

25 THE COURT: When did you decide to sue after that?

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1 THE WITNESS: I don't remember the exact date, but  
2 the moment when I met Jeff Solomon, partner of Gibson & Dunn  
3 at his office, off Grand Central.

4 THE COURT: But you're sure that was after  
5 November 26th, 2013, that you were informed that you had a  
6 right --

7 THE WITNESS: Yes, sir.

8 THE COURT: -- to sue?

9 When did you decide to sue?

10 THE WITNESS: Well, when I mentioned to them, I  
11 was-- they contacted some other lawyers, which was Heartland  
12 Alliance and I guess they were in control from there, sir.

13 THE COURT: Well, do you remember when you were told  
14 you had a right to sue?

15 THE WITNESS: At that conversation, that I had with  
16 Jeff Solomon of Gibson & Dunn, the date I went to see him. I  
17 don't remember the exact date. It was absolutely after I  
18 received my citizenship, sir.

19 THE COURT: The docket sheet in the Court shows that  
20 you filed your complaint.

21 MR. FLESSNER: October 31st of 2014.

22 THE COURT: On October 31st of 2014. Docket entry  
23 one; is that correct?

24 THE WITNESS: Yes, sir.

25 THE COURT: How soon before that, were you informed

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1 that you had a right to sue?

2 THE WITNESS: I would say, a few months, sir.

3 THE COURT: About how long?

4 THE WITNESS: A few months.

5 THE COURT: Just a few months?

6 THE WITNESS: Yes, sir.

7 THE COURT: No more than two?

8 THE WITNESS: No, sir.

9 THE COURT: Two?

10 THE WITNESS: About two or three months, tops, I  
11 would say, sir.

12 THE COURT: So you were informed of your right to  
13 sue, you say by July 31, 2014?

14 THE WITNESS: Yes, sir.

15 THE COURT: Would that be a close approximation of  
16 when you were informed?

17 THE WITNESS: Yes, sir.

18 THE COURT: Were you then under drugs?

19 THE WITNESS: When I was informed, sir?

20 THE COURT: When you were informed?

21 THE WITNESS: Yes, sir.

22 THE COURT: You were-- that was part of that drug  
23 period of your life?

24 THE WITNESS: Yes, sir.

25 THE COURT: How soon after you were released, did

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1 you go on drugs?

2 THE WITNESS: I would say maybe, within a month,  
3 sir.

4 THE COURT: You received in your hands the  
5 certificate, again, give me the date.

6 THE WITNESS: It was around April 2013.

7 MR. FLESSNER: Your Honor, can I interject?

8 THE COURT: Yes.

9 MR. FLESSNER: He received the certificate of  
10 citizenship in November 26th, 2013.

11 THE COURT: The year?

12 MR. FLESSNER: 2013.

13 THE COURT: Is that stipulated?

14 MR. MARUTOLLO: That is stipulated, Your Honor.

15 THE COURT: You received the certificate,  
16 November 22nd, 2013?

17 MR. FLESSNER: The 26th.

18 THE COURT: The 26th, I'm sorry. You were informed  
19 of your right to sue on or about July 31, 2014, correct?

20 THE WITNESS: Yes, sir.

21 THE COURT: You actually began the suit on  
22 November 31, 2014.

23 MR. FLESSNER: October 31st, Judge.

24 THE COURT: October, I'm sorry. 10/31.  
25 October 31st?



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1 THE WITNESS: Yes, sir.

2 THE COURT: All right. Do you want to ask any  
3 further questions?

4 MR. MARUTOLLO: Your Honor, may I respond to clarify  
5 a few things.

6 First, as we-- as plaintiff previously testified  
7 today, and throughout his removal proceedings, both in written  
8 briefs and at his deposition, plaintiff always believed that  
9 he was a citizen. He always understood he was a citizen.

10 Ultimately, the federal law here is that this  
11 accrual date, is a date that the plaintiff knows or has reason  
12 to know the constitutional injury against-- the receipt of  
13 certificate is not relevant to the accrual of his claim  
14 because he had reason to know, when he was detained by ICE, in  
15 legal detention, that his claim, that he was being unlawfully  
16 detained because he believed he was a citizen.

17 Further, the plaintiff's ignorance of the law, and  
18 lack of education, are not sufficient ground to warrant  
19 equitable tolling and we cited to Smith v McGinnis case from  
20 the Second Circuit in our brief, as well as Lizaide v  
21 Kirkpatrick, an Eastern District case, along with an  
22 assortment of other cases, in which mere ignorance of the law,  
23 even where the inmate is pro se, even where in one case, we  
24 cited to, where the inmate cannot speak English, is not  
25 sufficient grounds to warrant equitable tolling.

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1           The plaintiff's use of drugs, is not a factor  
2 regarding accrual, is not a factor regarding accrual of the  
3 claim. It is not relevant to the factors of whether or not he  
4 was pursuing his claims diligently or whether equitable  
5 tolling applied.

6           Just because the plaintiff is now in self serving  
7 testimony indicating that he was unsure about his citizenship  
8 until he got the certificate, does not change the fact that on  
9 May 8th, 2008, he knew he was a citizen. And he is claiming  
10 he was wrongfully detained, and the date of accrual here  
11 commenced on May 8th, 2008.

12           THE COURT: Now, you have a number of witnesses from  
13 the place of detention?

14           MR. MARUTOLLO: That's correct.

15           THE COURT: You can put them on. I think it should  
16 be stipulated that there was a substantial library available  
17 during those hours that we now have evidence of.

18           What else would you like a stipulation to?

19           MR. MARUTOLLO: That there were no extraordinary  
20 circumstances standing in the plaintiff's way, of obtaining  
21 any information.

22           I mean the witnesses will be testifying consistent  
23 with the deposition testimony frankly, that there were  
24 LexisNexis resource, books available, the Internet searches.  
25 You know, so again, they would also testify further about the

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1 fact that the facility is a model for other facilities.

2 So we would request a stipulation that, one, that  
3 there are no extraordinary circumstances standing in the  
4 plaintiff's way.

5 MR. FLESSNER: I won't stipulate to that. I will  
6 stipulate there was LexisNexis, they had these books.

7 I will also add that there was a DHS audit of the  
8 facility in '09, in which the law library was found to be  
9 inadequate. I was going to-- and they failed to comply with  
10 the recommendations to correct that. I was going to cross  
11 examine them on that.

12 THE COURT: What way was it inadequate?

13 MR. FLESSNER: I will pull out the report here.

14 October 27th through 28th of 2009, the Office of  
15 Detention Oversight had an inspection, and with respect to the  
16 access to legal material, the office found that there-- access  
17 to legal materials during the initial ODO inspection, two  
18 deficiencies were identified in this area, during the follow  
19 up inspection the following deficiencies which was found were  
20 not corrected.

21 The deficiency was, there wasn't adequate hours, not  
22 adequate procedure for-- the law library was available-- not  
23 available for use, scheduled hours were not accessible. The  
24 procedure for accessing.

25 I can-- I was going to use this in cross

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1 examination.

2 THE COURT: I will put it in evidence.

3 MR. FLESSNER: Put it in evidence and submit it.

4 THE COURT: Court Exhibit 2.

5 MR. FLESSNER: I can get a copy.

6 MR. MARUTOLLO: We have never received this  
7 document.

8 THE COURT: Put it in as Court Exhibit 2.

9 (So marked.)

10 THE COURT: I am prepared to find that the library  
11 facilities for his person would be insufficient to provide  
12 information sufficient.

13 MR. MARUTOLLO: Your Honor, we would--

14 THE COURT: Sufficient to permit a person in custody  
15 to understand the --

16 MS. MATTHEWS: Can we get clarification, the library  
17 was sufficient; is that correct, Judge?

18 THE COURT: For a person of skill and understanding,  
19 to appreciate that he had a right to sue for false arrest.

20 That should suffice for you, shouldn't it? Do you  
21 want anything else?

22 MR. MARUTOLLO: Well, Your Honor, just going back to  
23 the extraordinary circumstances stipulation, we would argue  
24 that the --

25 MR. FLESSNER: That was not stipulated to.

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1 MR. MARUTOLLO: I am trying to address it.

2 THE COURT: What do you want?

3 MR. MARUTOLLO: We would like clarification, from--  
4 because the plaintiff did not present--

5 THE COURT: What do you want, state it.

6 MR. MARUTOLLO: We want the stipulation that there  
7 were no extraordinary circumstances.

8 THE COURT: Extraordinary circumstances is not a  
9 stipulation, it is a conclusion. Its the facts you want  
10 stipulated to.

11 MR. MARUTOLLO: So, Your Honor, we would ask for  
12 stipulation, other than the plaintiff's lack of knowledge,  
13 about filing an administrative claim, there were no  
14 circumstances that the library that prevented his ability to  
15 file such a claim.

16 THE COURT: No, that I don't think is appropriate.  
17 If you want to put on all your witnesses, I will  
18 allow you to do so.

19 A stipulation that there was a library there, with  
20 information adequate and other facilities, Nexis and Lexis,  
21 adequate for a person of skill and understanding, to determine  
22 with reasonable diligence that he could file a suit against  
23 the Government for unlawful arrest and imprisonment.

24 Can you read that back.

25 (Read back by the Reporter.)

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1 MR. MARUTOLLO: Your Honor, we would ask for this  
2 additional stipulation, other than the plaintiff's lack of  
3 knowledge, he has identified no circumstances that prevented  
4 him from filing suit.

5 THE COURT: I'm not going to require that  
6 stipulation, because I have a person with limited education,  
7 in a state of depression and with limited knowledge of his  
8 rights, who has been informed by a Judge that he is not a  
9 citizen. So, I can't accept that, and expect the plaintiff to  
10 make that stipulation, that you are now asking for.

11 So if you want to put on all your witnesses, put  
12 them on, but I don't think it is necessary.

13 MR. MARUTOLLO: We would ask if the plaintiff can  
14 answer, when he was treated for depression, that is something  
15 that has not come up yet.

16 THE COURT: Were you treated for deposition while  
17 you were in custody?

18 THE WITNESS: No, sir.

19 THE COURT: Did you see the medical facility  
20 personnel?

21 MR. FLESSNER: I think his treatment is post  
22 release. He can explain.

23 THE COURT: Excuse me, I will ask the questions.

24 Did you see anyone in the facility, in the medical  
25 area with respect to complaints about your depression?

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1 THE WITNESS: No, sir.

2 THE COURT: Do you want to ask questions, you can.  
3 That is what we have.

4 We have a person of limited education, in a  
5 depression, confused about what his rights are, told by a  
6 Judge that he doesn't-- he isn't a citizen. Thinking he is a  
7 citizen, and confused.

8 That is the situation as I see it.

9 MR. MARUTOLLO: We would just argue that since he  
10 knew that he was a citizen, and since--

11 THE COURT: He believed he was a citizen. A Judge  
12 told him he was not. So he was in a state of confusion.

13 MR. MARUTOLLO: But Your Honor, we would argue that  
14 is what Kronous versus United States submits.

15 THE COURT: I understand your submission. You are  
16 saying that is not enough.

17 MR. MARUTOLLO: Right. He has reason to know.

18 THE COURT: If you want to take that stipulation as  
19 we have now laid it out, we can go forward without your  
20 witnesses. If you want your witnesses, I will listen to them  
21 all day. I'm sure they are delightful people coming from  
22 Buffalo to New York City.

23 MR. MARUTOLLO: Your Honor, may we have a short  
24 five-minute recess to talk.

25 MS. MATTHEWS: Thank you, Your Honor.

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1 (Recess taken.)

2 MS. MATTHEWS: Thank you, Your Honor.

3 MR. MARUTOLLO: Your Honor, my apologies for the  
4 delay.

5 We would accept the stipulation, but we would ask  
6 that items in our exhibit list, I can go through them, be  
7 admitted into evidence --

8 THE COURT: All right.

9 MR. MARUTOLLO: -- then in lieu of any live  
10 testimony, from the witnesses.

11 THE COURT: The witnesses are here prepared to  
12 testify.

13 MS. MATTHEWS: Those are AUSAs, but the witnesses  
14 are in the hallway.

15 THE COURT: They are here.

16 Put in whatever you want.

17 MR. FLESSNER: There was a document filed explaining  
18 the objections to exhibits. They had objections to ours and  
19 we had objections to theirs.

20 MR. MARUTOLLO: We want to put in, Your Honor, in  
21 our exhibit binder, which I provided to Your Honor, Exhibit A,  
22 which is the Jailhouse Lawyer Manual.

23 THE COURT: The Columbia Human Rights Law Review. I  
24 suggested that, that they put that manual together many years  
25 ago.



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1 MR. MARUTOLLO: It is excellent.

2 THE COURT: I was a teacher there.

3 MR. MARUTOLLO: Also Exhibit B, which is a separate  
4 chapter dealing with tort claims.

5 THE COURT: Granted.

6 MR. MARUTOLLO: Exhibit C, is legal reference  
7 materials, for detention facility.

8 THE COURT: Granted.

9 MR. MARUTOLLO: Exhibit D, is the excerpt from the  
10 Buffalo Federal Detention Facility.

11 THE COURT: Granted.

12 MR. MARUTOLLO: Exhibit E is the excerpt of the  
13 document that was used in 2007, so this-- the text of this  
14 document is part of the Buffalo Detention Handbook, the  
15 previous exhibit, was also provided. Substantively they are  
16 the same. We wanted to put both in.

17 MR. FLESSNER: They was not at the facility in 2007.

18 THE COURT: Granted. I will assume it continued to  
19 be used.

20 MS. MATTHEWS: Yes.

21 MR. MARUTOLLO: Exhibit F is the National Detention  
22 Handbook.

23 THE COURT: F?

24 MS. MATTHEWS: F as in frank.

25 MR. MARUTOLLO: Right.

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1 THE COURT: Okay.

2 MR. MARUTOLLO: So Exhibit F, we ask to go into  
3 evidence. Excerpt from the National Detainee Handbook.

4 THE COURT: Okay, admitted.

5 MR. MARUTOLLO: Exhibit G is the quick reference  
6 guide for LexisNexis that we were seeking to enter into  
7 evidence, that is available to detainees at the facility.

8 THE COURT: Granted.

9 MR. MARUTOLLO: Exhibit H is a certificate of  
10 accreditation from American Correctional Association,  
11 indicating that the Buffalo facility was fully accredited from  
12 2008 to 2011, the years the plaintiff was in custody.

13 THE COURT: Granted.

14 MR. MARUTOLLO: Exhibit I, is a-- Exhibit I through  
15 Exhibit L, are all exhibits that are readily available on  
16 discs or on the computer at the Buffalo Detention Center.

17 THE COURT: Granted.

18 MR. MARUTOLLO: So Exhibits I, J, K, L.

19 (So marked.)

20 MR. MARUTOLLO: Exhibit M, is plaintiff's phone log  
21 from his detention.

22 THE COURT: Granted.

23 MR. MARUTOLLO: Exhibit N is already in evidence.

24 Exhibit O, is plaintiff's detention history that  
25 actually provides the precise number days, he was at different

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1 facilities.

2 THE COURT: Granted.

3 MR. MARUTOLLO: Exhibit P is the plaintiff's  
4 retention letter, there was no objection to that, Your Honor.

5 THE COURT: Granted.

6 MR. MARUTOLLO: Exhibit Q, is a listing of free  
7 legal services and a disclaimer that is available to detainees  
8 in Buffalo.

9 THE COURT: Granted.

10 MR. MARUTOLLO: Exhibit R is a screen shot of the  
11 detainee computer desktop at the Buffalo Federal Detention  
12 Facility.

13 THE COURT: Granted.

14 MR. FLESSNER: Objection. This was not available  
15 from '08 to 2011.

16 THE COURT: Then that is not of any significance.  
17 Go ahead.

18 MR. MARUTOLLO: Well, Your Honor, I think this  
19 actually is significant.

20 THE COURT: Bring in the witness, if you are going  
21 to oppose it.

22 MR. FLESSNER: Go ahead.

23 THE COURT: It is in then.

24 (So marked.)

25 MR. MARUTOLLO: Exhibit S is a screen shot of

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1 documents containing a legal form short cut, that has an SF-95  
2 sub-folder in it.

3 THE COURT: Granted.

4 MR. MARUTOLLO: Exhibit T is SF-95 available on the  
5 desktop and discs, during the plaintiff's detention.

6 THE COURT: Granted.

7 MR. MARUTOLLO: Exhibit U is a screen shot of  
8 selective topics on the LexisNexis program that were available  
9 to detainees.

10 THE COURT: Granted.

11 MR. MARUTOLLO: Exhibit V is a printout of materials  
12 on LexisNexis concerning constitutional rights to prisoners  
13 including FTCA claims.

14 THE COURT: Granted.

15 MR. MARUTOLLO: Exhibit W is another printout of  
16 materials available to detainees on the Lexis program that  
17 also has FTCA information in it.

18 THE COURT: Granted.

19 Do you rest?

20 MR. MARUTOLLO: Yes, Your Honor.

21 THE COURT: Do you rest?

22 MR. FLESSNER: I would just move to admit our  
23 exhibits as well.

24 THE COURT: Okay.

25 MR. FLESSNER: I can read through them or it is A

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1 through BB.

2 THE COURT: Do you object to any of them?

3 MR. MARUTOLLO: Yes, we do.

4 THE COURT: Which ones?

5 MR. MARUTOLLO: We object to-- pursuant to the

6 filing, we object to a number of these exhibits.

7 THE COURT: Which ones?

8 MR. MARUTOLLO: Exhibit A.

9 THE COURT: A?

10 MR. MARUTOLLO: A as in Adam.

11 MR. FLESSNER: The transcript of the removal

12 proceedings.

13 THE COURT: Overruled. Admitted. What else?

14 MR. MARUTOLLO: We object to Exhibit B which is the

15 decision of the immigration appeals. We argued that again.

16 THE COURT: Overruled. It is admitted.

17 D is marked 7/14/08. It is right in the middle.

18 MR. MARUTOLLO: Your Honor, we object to Exhibit D.

19 THE COURT: Exhibit what?

20 MR. MARUTOLLO: D is in David.

21 THE COURT: No, that is admitted. It is a statement

22 by Watson. Contemporaneous to show it is state of mind.

23 MR. MARUTOLLO: Your Honor, the major objections are

24 Exhibit T.

25 THE COURT: Let's get to T.

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1 MR. MARUTOLLO: That is the entirety of the  
2 plaintiff's deposition transcript.

3 THE COURT: We will keep it out except as it is used.

4 MS. MATTHEWS: That is fine.

5 MR. MARUTOLLO: Your Honor, we would also object  
6 definitely to-- I'm sorry, withdrawn. I don't think we have  
7 any other objections.

8 THE COURT: Okay. That is it.

9 Anything else you want to put in?

10 MR. MARUTOLLO: No, Your Honor.

11 MR. FLESSNER: So I'm clear everything is admitted  
12 except T, was that your ruling?

13 THE COURT: Except for the deposition and the  
14 deposition was in, insofar as it was used, and being quoted  
15 from.

16 MR. FLESSNER: Thank you, nothing further from us.

17 THE COURT: Do you rest?

18 MR. MARUTOLLO: Yes, Your Honor.

19 THE COURT: All right. I'm going to find that the  
20 statute began to run when he received the certificate on  
21 November 26th, 2013. That if that is not the statute, that  
22 equitable tolling ran until he was informed of the right to  
23 sue on July 31, 2014.

24 So there was tolling, equitable tolling until  
25 July 31, 2014. Therefore the suit is timely, and an opinion

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1 will obviously have to follow and I will issue it, but I  
2 wanted to move the case.

3 Now, when will you be prepared to try the case?

4 MR. FLESSNER: Well, Your Honor, we were actually  
5 talking about this earlier. With respect to liability, there  
6 really is very little.

7 THE COURT: Make that a docket entry.

8 MR. FLESSNER: I'm sorry, with respect to liability  
9 there is really very little discovery that needs to be done.  
10 We have obtained most of the Government's file through FOIA  
11 and obviously Mr. Watson has no documents.

12 I think it is-- if we bifurcate the damages from the  
13 liability, because I think damages, we are going to need  
14 expert witnesses and need medical records. If we were going to  
15 just try this case on liability, I think this case can be  
16 tried in October.

17 THE COURT: Is that true? Do you want to bifurcate  
18 it?

19 MR. MARUTOLLO: Well, Your Honor, first we would  
20 just note, I realize a decision is still pending, we still  
21 have two issues that we had moved on with respect to the  
22 plaintiff's FTCA claims, that there were no private analog for  
23 his negligence or malicious prosecution claim and that  
24 assuming that the-- you know, that the claims are timely, the  
25 only remaining claim is for false arrest. Malicious

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1 prosecution claim and negligence claims out.

2 Having said that, we also in the motion moved for  
3 summary judgment, you know, on all of plaintiffs's claims.  
4 Even if they are timely, we still thought on the merits that  
5 the plaintiff's FTCA claims would be-- should be dismissed.

6 THE COURT: Well, I will reserve until I hear the  
7 evidence on that issue. I will try it and reserve.

8 MR. MARUTOLLO: Right. I think Your Honor, there is  
9 the probable cause is undisputed. The argument made-- we have  
10 already set forth the argument pertaining to the probable  
11 cause that existed for the false arrest and the malicious  
12 prosecution.

13 So again, on the merits, we would think that you  
14 know, as a matter of law, without a trial this case should be  
15 dismissed.

16 THE COURT: I will reserve on those until I hear the  
17 evidence on liability.

18 MR. MARUTOLLO: Then, given that, Your Honor, we  
19 would then ask for bifurcation of the liability and damages  
20 portions.

21 THE COURT: Granted, both sides wish it.

22 Why can't it go forward before October?

23 MR. FLESSNER: I was just thinking, maybe if we can  
24 schedule it before.

25 THE COURT: It seems to me it is a September case.



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1 MR. MARUTOLLO: The one caveat, I might add to the  
2 extent we need witnesses from Buffalo, I'm not sure  
3 necessarily of their availability in September.

4 THE COURT: It is a non jury, so we can take them by  
5 phone or we can take them with continuances.

6 MR. FLESSNER: I am looking at the week of the 21st.

7 THE COURT: Of what?

8 MR. MARUTOLLO: September 21st, I can certainly be  
9 here.

10 THE COURT: Is that a viable date?

11 That's not good.

12 MR. FLESSNER: I can juggle things to do the  
13 following week as well, the week of the 28th.

14 THE COURT: That is okay.

15 MR. MARUTOLLO: Yes, Your Honor, that is fine by me  
16 as well.

17 THE COURT: The 28th.

18 So, try to get to me at least three or four days  
19 before the trial date, working business days, with a list of  
20 all your witnesses, what they are going to say, a list of all  
21 your documents, preferably, conceded that they will be  
22 admissible or objecting as the case maybe. Marked and  
23 exchanged.

24 And, proposed findings of fact and law and briefs,  
25 supporting those proposed findings of fact and law.

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1 MS. MATTHEWS: What is the date that the proposed  
2 findings of fact and law are due, Judge?

3 THE COURT: About four days before-- four days  
4 before.

5 MR. MARUTOLLO: September 23rd, Your Honor?

6 THE COURT: Yes. Is that right?

7 COURTROOM DEPUTY: Yes.

8 MR. FLESSNER: 9/23.

9 THE COURT: Yes, I want a few days to go through  
10 them, the briefs and everything.

11 So you can work out your own briefing schedule, if  
12 you can't the Magistrate Judge will do it.

13 MR. MARUTOLLO: Sorry, for clarification, the  
14 proposed findings of fact and conclusions of law are due  
15 September 23rd, but the briefs are due prior to  
16 September 23rd.

17 THE COURT: No, that is fine.

18 MR. FLESSNER: The witness list and everything is  
19 due the 23rd?

20 THE COURT: Yes.

21 MR. FLESSNER: Your Honor, one other thing.

22 THE COURT: Any other rulings that you want at this  
23 point?

24 MR. MARUTOLLO: No, Your Honor.

25 MR. FLESSNER: The N-600 application, I have the

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1 ruling on the N-600 application in my exhibits. I don't have  
2 the actual application, if you want me to supply it to the Court.

3 THE COURT: You can send it in. I will take it you  
4 will rely on that at the trial so it will be part of the trial  
5 materials.

6 Anything we have now, you don't have to duplicate  
7 just indicate it on your list of documents.

8 MR. MARUTOLLO: Your Honor, just again for  
9 clarification sake, the only claims now that will be addressed  
10 at this trial on liability on September 28th, will be the  
11 plaintiff's FTCA false arrest, negligence and malicious  
12 prosecution claims, right?

13 THE COURT: Yes.

14 Well, false arrest.

15 MR. MARUTOLLO: I should say, false imprisonment.

16 THE COURT: False imprisonment. I really don't  
17 see-- malicious prosecution for these people. It seems to me  
18 it is a false arrest, a false imprisonment, negligence with  
19 respect to that, but not malicious prosecution. I don't see  
20 any point going forward with malicious prosecution.

21 MR. FLESSNER: Malicious prosecution, that was  
22 putting him in removal proceedings and prosecuting him even up  
23 to two years after he was released from detention. After he  
24 was even released, and they internally determined, they  
25 continued to prosecute him in removal proceedings, not

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1 allowing him to have papers and work for two more years. That  
2 is the malicious prosecution claim.

3 THE COURT: I see.

4 MR. FLESSNER: So there are two years after.

5 THE COURT: I think that those claims for two years  
6 beyond, could come in as part of his false imprisonment on the  
7 theory that when you can't work freely, you are still being  
8 detained. You are not free.

9 But if you want to argue malicious prosecution, I  
10 will hear it. Malicious prosecution, gets a little more  
11 complicated. But I think arguably, a person is not free just  
12 as when he is not free on the supervised release, because he  
13 is limited. He is not free if he can't work. A person who  
14 can't work is not free, right? I mean that is the theory.

15 MR. FLESSNER: I think the evidence will show that  
16 and we will demonstrate, they should have dismissed his  
17 removal proceedings as soon as they released him.

18 THE COURT: When they released him.

19 MR. FLESSNER: Correct.

20 THE COURT: All right. And that-- so the malicious  
21 prosecution would begin from that point.

22 MR. FLESSNER: I guess that is right. Once they  
23 made their determination.

24 THE COURT: So, it is false imprisonment, false  
25 arrest from the time he is picked up until he is released, and

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1 malicious prosecution from that time until his case is  
2 dismissed, right?

3 MR. FLESSNER: Right. Well, no until-- no, you are  
4 right. The negligence would include the time in which he  
5 didn't get his certificate.

6 THE COURT: Right. So that is the way you will  
7 brief it.

8 MR. FLESSNER: Correct.

9 THE COURT: We will try to get out a little  
10 memorandum and order for you.

11 Anything else you wish done at this time?

12 MS. MATTHEWS: No.

13 MR. MARUTOLLO: No, Your Honor.

14 MR. FLESSNER: Thank you very much, Your Honor.

15 THE COURT: Thank you very much for your help.

16 (Matter concluded.)

17 - - o o 0 o o - -

18 I CERTIFY that the foregoing  
19 is a correct transcript from  
20 the record of proceedings  
in the above entitled matter.

21 s/Richard W. Barry

22 Richard W. Barry, RPR

23

24

25

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